

**NORTHERN TERRITORY OF AUSTRALIA**

**LAND TITLE ACT**

As in force at 13 July 2005

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 13 July 2005

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## LAND TITLE ACT

**An Act to consolidate and reform the law about the registration of land and interests in land and for related purposes**

### **Part 1 Preliminary**

#### **1 Short title**

This Act may be cited as the *Land Title Act*.

#### **2 Commencement**

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

#### **3 Object of Act**

- (1) The object of this Act is to consolidate and reform the law about the registration of land and interests in land and in particular:
- (a) to simplify the title to land and facilitate dealings with land;
  - (b) to define the rights of persons with an interest in registered land;
  - (c) to continue and improve the system for registering title to and transferring interests in land;
  - (d) to define the powers and functions of the Registrar-General under this Act;
  - (e) to facilitate access to information about administrative interests and other information in respect of land;
  - (f) to assist the keeping of the land register in the Land Titles Office, particularly by authorising the use of information technology; and
  - (g) to facilitate the collection and disposal of information relating to land or the buying and selling of land.

- (2) If there is an inconsistency between a provision of this Act and a provision of the *Law of Property Act 2000*, this Act prevails.

#### 4 Definitions

In this Act, unless the contrary intention appears:

**appropriate form**, for an instrument, means:

- (a) the form that is the approved form for the instrument; or
- (b) if a form is approved or prescribed for the instrument under another Act – that form.

**approved form** means a form prescribed by the Regulations or the Registrar-General's directions.

**bankruptcy** includes a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations.

**caveatee**, in relation to a lot over which a caveat has been lodged, means:

- (a) a registered proprietor of the lot; or
- (b) someone (other than the caveator) who has an interest in the lot.

**caveator**, in relation to a lot over which a caveat has been lodged, means a person in whose favour the caveat is lodged.

**certificate as to title** means a certificate issued by the Registrar-General under section 44.

**Commonwealth jurisdiction** means a State or another Territory of the Commonwealth or New Zealand.

**correct** includes correct by addition, omission or substitution.

**covenant** has the same meaning as in Division 4 of Part 9 of the *Law of Property Act*.

**covenant in gross** has the same meaning as in Division 4 of Part 9 of the *Law of Property Act*.

**dealing** means an instrument or matter whereby land or the title to land can be affected or dealt with.

**deed of grant** means a document evidencing the grant of land (including leasehold) by the Crown.

**document** means paper or other material (including electronic material) containing writing, words, figures, drawings or symbols.

**deposit** means file in the Land Titles Office other than for registration.

**easement** has the same meaning as in Division 2 of Part 9 of the *Law of Property Act*.

**easement in gross** has the same meaning as in Division 2 of Part 9 of the *Law of Property Act*.

**error** includes an error by omission.

**fee** includes tax.

**indefeasible title**, in relation to a registered lot, has the meaning given by section 40.

**instrument** includes:

- (a) a deed of grant or certificate as to title;
- (b) a deed that relates to or may be used to deal with a lot;
- (c) a power of attorney that may be used to deal with a lot;
- (d) a request, application or other document that deals with a lot and may be registered under this Act;
- (e) a map or plan of survey that may be lodged;
- (f) a plan of subdivision that may be lodged; and
- (g) an order of a court.

**land register** means the register referred to in section 6.

**Land Titles Office** means the Lands Titles Registration and General Registry Office established by section 4 of the *Registration Act*.

**lease** includes a sublease.

**lessee** means the registered proprietor of a lease.

**lessor** means the registered proprietor of land subject to a lease.

**local government body** means:

- (a) a municipal council or community government council within the meaning of the *Local Government Act*; or
- (b) any other body that performs local government functions.

**lodge**, in relation to a document, means depositing or lodging the document in the Land Titles Office for registration and includes, in addition to the physical depositing or lodging, any other methods of depositing or lodging permitted by the Registrar-General under section 14.

**lot** means a separate, distinct parcel of land created on:

- (a) the recording of particulars of a deed of grant; or
- (b) the registration of a plan of subdivision,

and includes a unit and common property, within the meaning of the *Unit Titles Act*, a lot under Part IVB of that Act and a building lot within the meaning of that Act.

**mortgage** includes:

- (a) a charge on a lot or an interest in a lot for securing:
  - (i) a debt; or
  - (ii) the payment of an annuity, rent, charge or a sum of money in favour of a person;
- (b) a statutory charge; and
- (c) an overriding statutory charge.

**mortgagee** means the registered proprietor of a mortgage.

**mortgagor** means the registered proprietor of land subject to a mortgage.

**overriding statutory charge**, in relation to a lot, means a statutory charge that is expressed in the Act by or under which it is established:

- (a) to be an overriding charge within the meaning of this Act; or
- (b) to have priority over all other charges on the lot.

**plan of subdivision** means a plan approved by the Surveyor-General under section 49(3) of the *Licensed Surveyors Act* relating to the subdivision.

**plan of survey** means a plan prepared and certified by a licensed surveyor that complies with the *Licensed Surveyors Act* and includes:

- (a) a plan of subdivision of a lot; and
- (b) a re-survey conducted to define the boundaries of a lot.

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

**proprietor**, of a lot, means a person entitled to an interest in the lot, whether or not the person is in possession.

**public use land** means land referred to in section 52(1)(a).

**record of administrative interests and information** means the record of administrative interests and information referred to in section 38.

**register**, in relation to a lot, interest, instrument or other thing, means record the particulars of the thing in the land register.

**registered owner**, of a lot, means the person recorded in the land register as the person entitled to:

- (a) the fee simple interest in the lot; or
- (b) a lease from the Crown under the *Crown Lands Act*, *Pastoral Land Act* or *Special Purposes Leases Act*.

**registered proprietor**, of a lot, means a person recorded in the land register as a proprietor of the lot.

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

**relevant registrar** means a person who under the law of another Commonwealth jurisdiction exercises functions similar to those performed by the Registrar-General under this Act.

**short lease** means a lease:

- (a) for a term of 3 years or less; or
- (b) from year to year or a shorter period.

**sketch plan** means a drawing in an instrument drawn to a standard to the Registrar-General's satisfaction that is not a plan of survey.

**statutory charge** means a charge on a lot established by or under a law in force in the Territory:

- (a) that is expressed in the law to be a statutory charge within the meaning of this Act; or
- (b) that after it is registered:
  - (i) imposes a restriction on the use of or dealing with the lot; or
  - (ii) gives a right to a person to deal with the lot, including the right of sale,

and includes an overriding statutory charge for the purposes of Subdivision 2 of Division 3 of Part 6 and section 153.

**subdivision** has the meaning it has in the *Planning Act*.

**term** includes covenant and condition.

**term**, of a lease, means the period beginning when the lessee is first entitled to possession of a lot or part of a lot under the lease and ending when the lessee is last entitled to possession, even if the lease consists of 2 or more discontinuous periods.

**transmission** means the passing of title to land in any manner other than by transfer.

**writ of execution** means a writ or warrant of execution after judgement in a court.

## 5 Act binds Crown

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

## Part 2 Administration

### Division 1 Establishment of land register

#### 6 Registrar-General must keep land register

- (1) The Registrar-General must keep a register of land.

- (2) The land register consists of:
  - (a) particulars recorded by the Registrar-General in accordance with sections 30 and 31;
  - (b) registered instruments; and
  - (c) documents lodged with the Registrar that are not required to be registered.
- (3) The land register may be kept in the form (whether or not in a documentary form) the Registrar-General considers appropriate.
- (4) The Registrar-General may change the form in which the land register or a part of the land register is kept.

## **Division 2 General requirements for instruments in land register**

### **7 Form of instruments**

- (1) An instrument lodged by a person or issued by the Registrar-General must be in the appropriate form.
- (2) An instrument required or permitted to be executed must be in the appropriate form when it is executed.
- (3) The Registrar-General may register an instrument that is not in the appropriate form if the Registrar-General is satisfied it is not reasonable to require the instrument to have been executed in the appropriate form.

### **8 Acceptance of forms used in States, etc.**

- (1) The Registrar-General may accept a dealing, instrument, document or plan in respect of land in the Territory in accordance with a form that is used in another Commonwealth jurisdiction if, in the opinion of the Registrar-General:
  - (a) the form is consistent with the law of the Territory; and
  - (b) the form is suitable for use in the Territory.
- (2) If a form referred to in subsection (1) refers to a provision of a law in force in a place outside the Territory, the reference is taken to be a reference to a comparable provision in the law of the Territory and, for the purposes of the application of the Territory law, the form is taken to have been validly executed in the Territory.

**9 Execution of forms outside of Territory**

- (1) An instrument that is in an appropriate form may be accepted if it is executed in accordance with this Act or the law of the place where the form is executed.
- (2) A form may be accepted under section 8 if it is executed in accordance with this Act, the law of the place where the form is normally used or the law of the place where it is executed.

**10 Execution of certain instruments**

- (1) An instrument to transfer or create an interest in a lot must be executed by:
  - (a) the transferor or the person creating the interest; and
  - (b) the transferee or the person in whose favour the interest is to be created.
- (2) A total or partial discharge of a mortgage need only be executed by the mortgagee.

**11 Consent to be written on instrument etc.**

- (1) If the consent of a person is necessary for the transfer or other dealing with a lot, the consent must be:
  - (a) written or contained on, or form part of, the relevant instrument; or
  - (b) if the Registrar-General considers it appropriate – lodged with the relevant instrument.

**12 Required number of executed copies to be lodged**

The Registrar-General may refuse to register an instrument if the number of executed copies of the instrument prescribed by the Regulations or the Registrar-General's directions are not lodged.

**13 Registrar-General may authorise printing and sale of forms**

- (1) The Registrar-General may, on reasonable terms, authorise a person to print and sell the appropriate form for an instrument other than a certificate as to title.
- (2) A direction in or under this Act that an appropriate form is to be used applies equally to a form to the like effect or for a similar purpose authorised in conformity with this Act.



**14 Lodgement etc. of documents**

The Registrar General may:

- (a) permit documents to be executed;
  - (b) permit documents to be deposited or lodged; and
  - (c) correct documents that have been deposited or lodged,
- by any means, including electronic means, that he or she thinks fit.

**15 Address for service to be provided**

- (1) An instrument is to contain an address for the service of notices of any person with a registered interest in land arising from the instrument.
- (2) However, the Registrar-General's directions may provide that it is unnecessary to specify an address for service.
- (3) A person with a registered interest in land must ensure that the Registrar-General is notified of any change in the address for service.
- (4) The Registrar-General must record in the land register:
  - (a) the address for service provided under subsection (1); and
  - (b) a change of the address for service on being notified of the change.
- (5) No fee is required to be paid for a change recorded under subsection (4).

**Division 3 Powers of Registrar-General**

**16 Registrar-General may demand fees**

- (1) The Registrar-General may demand and receive the fees and charges that are prescribed.
- (2) The Registrar-General may provide credit facilities for persons to pay those fees and charges at intervals that he or she thinks fit.
- (3) The Registrar-General may receive fees electronically.

## **17 Registrar-General may correct land register**

- (1) The Registrar-General may correct or amend the land register if satisfied:
  - (a) that:
    - (i) the land register is incorrect; or
    - (ii) land has been alienated under legislation providing for leasehold or freehold title, whether before 1 January 1887 or not, but the particulars do not form part of the land register; and
  - (b) that the correction or amendment will not prejudice the rights of a holder of an interest recorded in the land register.
- (2) The Registrar-General's power to correct the land register includes the power to correct a particular in the land register or an instrument forming part of the land register.
- (3) If the land register is corrected, the Registrar-General must record in the land register:
  - (a) the state of the land register before the correction; and
  - (b) the time, date and circumstances of the correction.
- (4) The land register corrected by the Registrar-General has the same effect as if the relevant error had not been made.
- (5) For subsection (1)(b), the rights of the holder of an interest recorded in the land register are not prejudiced if the holder acquired or has dealt with the interest with actual or constructive knowledge that the land register was incorrect and how it was incorrect.
- (6) The Registrar-General may before taking any action under this section give notice of the proposed action to any person that the Registrar-General considers should be notified of it.
- (7) If the Registrar-General gives notice under this section, the Registrar-General:
  - (a) may refuse to take the action until the period specified in the notice expires; and

- (b) may proceed to take the action at or after the period expires unless the Registrar-General is served with, or with written notice of, an order of the Supreme Court restraining the Registrar-General from so doing.
- (8) If a person given notice under this section does not within the time limited by the notice serve on the Registrar-General or give the Registrar-General written notice of an order of the Supreme Court restraining the Registrar-General from taking the action, no action by that person or by any person claiming through or under that person may be instituted against the Registrar-General in respect of the taking of the action specified in the notice.
- (9) No action may be instituted against the Registrar-General for failure to give a notice under this section.

**18 Registrar-General may prepare and lodge caveat**

- (1) The Registrar-General may prepare and lodge a caveat over a lot in favour of:
  - (a) a registered proprietor of the lot; or
  - (b) someone else who has an interest in the lot.
- (2) The Registrar-General may act under subsection (1) to prevent a dealing with the lot that may prejudice:
  - (a) the Territory, the Commonwealth or a local government body;
  - (b) a minor;
  - (c) a person who is intellectually or mentally impaired or who is incapable of managing his or her own affairs;
  - (d) a person who is absent from the Territory;
  - (e) a person because of misdescription of the lot or its boundaries;
  - (f) a person because of fraud or forgery; or
  - (g) any other person who has an interest in the lot.
- (3) The Registrar-General may act under subsection (1) to prevent a dealing with a lot to give effect to an order of a court of competent jurisdiction directed to the Registrar-General.

- (4) Subsection (2)(g) applies only if the Registrar-General is satisfied there is no practicable alternative to registering the caveat, because of the nature or urgency of particular circumstances.

**19 Registrar-General may require public notice to be given of certain proposed action**

- (1) This section applies if a person asks the Registrar-General to do any of the following things:
- (a) register a transmission of a registered interest;
  - (b) issue a substitute registered instrument;
  - (c) dispense with production of an instrument.
- (2) The Registrar-General may, by written notice, require the person to give public notice of the request.
- (3) The Registrar-General may specify in the notice:
- (a) what is to be included in the public notice;
  - (b) how many times the public notice is to be published; and
  - (c) how and when the public notice is to be published.
- (4) The person must satisfy the Registrar-General that the public notice has been given as required by the Registrar-General.

**Division 4 Inquiries**

**20 Registrar-General may decide to hold inquiry**

The Registrar-General may decide to hold an inquiry under this Division:

- (a) to decide whether the land register should be corrected;
- (b) to decide whether a person should produce an instrument for the purposes of registering a dealing;
- (c) to consider whether a person has fraudulently or wrongfully obtained, kept or procured an instrument affecting land in the land register;
- (d) to consider whether a person has fraudulently or wrongfully procured a particular in the land register or an endorsement on an instrument affecting land;

- (e) in circumstances that may be prescribed.

**21 Registrar-General's duties on inquiry**

When conducting the inquiry, the Registrar-General:

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

**22 Registrar-General may decide procedures**

- (1) The Registrar-General:
  - (a) is not bound by the rules of evidence;
  - (b) may inform himself or herself in any way the Registrar-General considers appropriate; and
  - (c) may decide the procedures to be followed at the inquiry.
- (2) The Registrar-General must comply with this Division and the procedural rules that may be prescribed.

**23 Registrar-General's powers on inquiry**

- (1) In conducting the inquiry, the Registrar-General may:
  - (a) act in the absence of a person who has been given reasonable notice;
  - (b) receive evidence on oath or affirmation or by statutory declaration;
  - (c) adjourn the inquiry;
  - (d) disregard a defect, error or insufficiency in a document; and
  - (e) permit or refuse to permit a person (including a legal practitioner enrolled in the Territory or elsewhere) to represent someone at the inquiry.
- (2) The Registrar-General may administer an oath or affirmation to a person appearing as a witness before the inquiry.

## **24 Notice to witness**

- (1) The Registrar-General may, by written notice given to a person, require the person to attend the inquiry at a specified time and place as a witness to give evidence or produce specified documents or things.
- (2) A person required to appear as a witness before the inquiry is entitled to:
  - (a) the witness fees that are prescribed; or
  - (b) if no witness fees are prescribed – the reasonable witness fees decided by the Registrar-General.

## **25 Offences by witnesses**

- (1) A person who is given a notice under section 24 must not, without reasonable excuse:
  - (a) fail to attend as required by the notice; or
  - (b) fail to continue to attend at the inquiry as required by the Registrar-General.

Penalty: 100 penalty units.

- (2) A person appearing as a witness at the inquiry must not:
  - (a) fail to take an oath or make an affirmation when required by the Registrar-General;
  - (b) fail, without reasonable excuse, to answer a question the person is required to answer by the Registrar-General; or
  - (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 24.

Penalty: 100 penalty units.

- (3) It is a reasonable excuse for a person to fail to answer a question or produce a document or thing if answering the question or producing the document or thing might tend to incriminate the person.

## **26 Powers of Registrar-General following inquiry**

The Registrar-General may at the end of an inquiry do any of the following:

- (a) correct the land register;

- (b) order that an instrument be produced;
- (c) refer any findings of fraudulent or wrongful actions to the Commissioner of Police;
- (d) lodge a caveat under section 18;
- (e) publish reasons for any decision made.

## **Division 5 Referral of matter to Supreme Court**

### **27 Referral to Supreme Court from inquiry**

- (1) If in an inquiry under Division 4, a person:
  - (a) fails to attend as required by a notice given under section 24;
  - (b) fails to continue to attend as required by the Registrar-General;
  - (c) fails to take an oath or make an affirmation when required by the Registrar-General;
  - (d) fails to answer a question the person is required to answer by the Registrar-General; or
  - (e) fails to produce a document or thing the person is required to produce by a notice under section 24,

the Registrar-General may apply to the Supreme Court for an order to compel the person to comply with the notice or requirement.

- (2) The Supreme Court may make any order to assist the Registrar-General in his or her conduct of the inquiry that the Supreme Court considers appropriate.

### **28 Other referrals by Registrar-General to Supreme Court**

In any matter under this Act, the Registrar-General may:

- (a) apply to the Supreme Court for directions; or
- (b) state a case for decision by the Supreme Court.

## **Part 3 Land register**

### **Division 1 General**

#### **29 Record of non-current or historical dealings**

- (1) The Registrar-General must keep a record of all dealings, including non-current or historical dealings, recorded in, or action taken in respect of, the land register and any other non-current or historical information in relation to the land register that the Registrar-General thinks fit.
- (2) The record of dealings kept under subsection (1) is not part of the land register.
- (3) The Registrar-General may permit a person to have access to the record of dealings kept under subsection (1) on the person paying the prescribed fee, if any.

#### **30 Particulars Registrar-General must record**

- (1) The Registrar-General must record in the land register the particulars necessary to identify:
  - (a) every lot brought under this Act;
  - (b) every interest registered in the land register;
  - (c) the name of the person who holds, and the name of each person who has held, a registered interest;
  - (d) if the person who holds a registered interest is a minor – the person's date of birth; and
  - (e) all instruments registered in the land register and when they were lodged and registered.
- (2) The Registrar-General must also record in the land register anything else required to be recorded by this or another Act.
- (3) An interest in a lot includes details of trusts for public purposes created by the Crown in relation to the lot.

#### **31 Particulars Registrar-General may record**

- (1) The Registrar-General may record in the land register anything that the Registrar-General is permitted to record by this or another Act.



- (2) The Registrar-General may also record in the land register anything that the Registrar-General considers should be recorded to ensure that the land register is an accurate, comprehensive and useable record of land in the Territory.

### **32 Entitlement to search land register**

- (1) When the Land Titles Office is open for business, the Registrar-General must provide a person who pays the prescribed fee with adequate access:
  - (a) to the land register; and
  - (b) to registered instruments (or copies of them).
- (2) Access may be provided by way of certificate, statement, visual display unit, computer print-out, microfiche reader or any other means that the Registrar-General considers appropriate.

### **33 Evidentiary effect of certified copies of documents**

- (1) A document purporting to be a certified copy of the indefeasible title of a lot, certified by the Registrar-General to be an accurate copy, is evidence of the indefeasible title.
- (2) A document purporting to be a certified copy of a registered instrument, certified by the Registrar-General to be an accurate copy, is evidence of the registered instrument.

### **34 Caution notices**

- (1) The Minister or, if a minister of the Commonwealth has administrative responsibility for the first grant or transfer of land from the Crown, that minister may lodge with the Registrar-General a memorandum if he or she is of the opinion that characteristics of or relating to the land may adversely affect its use or occupation.
- (2) The memorandum may be lodged:
  - (a) on the first grant or transfer of land (whether freehold or leasehold) from the Crown; or
  - (b) at any time afterwards with the consent in writing of the registered proprietor of any interest in the land that is affected by the memorandum.
- (3) The memorandum is to:
  - (a) identify the land;

- (b) set out the characteristics of or relating to the land that may adversely affect its use or occupation; and
  - (c) if the memorandum is lodged other than on the first grant or transfer of the land – contain the consent of the registered proprietor of any interest in the land that is affected by the memorandum.
- (4) Characteristics of or relating to land that may be set out in the memorandum include:
- (a) a propensity towards flooding;
  - (b) the presence of unexploded bombs or other ordnance; and
  - (c) the presence of rubbish disposal or landfill sites, whether compacted or not.
- (5) The Registrar-General must:
- (a) register the memorandum; and
  - (b) enter a caution notice in the land register against the land to which the memorandum relates.
- (6) A caution notice does not of itself preclude any dealing with the land.

### **35            Notices of statutory restrictions**

- (1) If a law of the Territory imposes a restriction on the use or occupation, or any dealing, with land, the Minister having responsibility for the administration of the law:
- (a) may; or
  - (b) if the land is prescribed property and was granted to an association by section 46(1A) of the *Lands Acquisition Act* – must,
- lodge with the Registrar-General a memorandum.
- (2) The memorandum is to:
- (a) identify the land;
  - (b) specify the statutory authority under which the restriction was imposed and the date on which it was imposed; and
  - (c) request that a memorial be entered in the land register in relation to the land.

- (3) A restriction under this section includes the right of the Crown to revoke the reservation on land held by a council on lease under section 337 of the *Local Government Act 1985* as saved by Part 14 of the *Local Government Act 1993*.
- (4) If land is prescribed property and was acquired wholly or partly from or using funds obtained under a grant from the Commonwealth, the appropriate minister of the Commonwealth may lodge the memorandum instead of the Minister.
- (5) The Registrar-General must:
  - (a) register the memorandum; and
  - (b) enter a statutory restrictions notice in the land register against the land to which the memorandum relates.
- (6) A statutory restrictions notice does not of itself preclude any dealings with land but has effect according to the tenor of the statutory restriction to which it refers.
- (7) In this section, **prescribed property** has the meaning it has in the *Associations Act*.

### **36 Removal of memorials**

- (1) The Minister may direct the Registrar-General to remove a memorial made under section 34 or 35 if the Minister is satisfied the reason for the entry of the memorial no longer exists.
- (2) The Registrar-General must remove the memorial on being directed under subsection (1).

### **37 No liability on Minister, etc.**

No action or proceeding lies against a minister or a minister of the Commonwealth, or the Territory or the Commonwealth, on account of anything done or omitted to be done for the purposes of sections 34 and 35 or done in good faith and purported to be done in pursuance of sections 34 and 35.

### **38 Record of administrative interests**

- (1) The Registrar-General may keep information that the Registrar-General considers necessary or desirable in relation to land.

- (2) Subject to another Act and the Regulations, the Registrar-General may allow a person access to information referred to in subsection (1) in accordance with an agreement entered into between the Registrar-General and the person and on the person paying the prescribed fee, if any.
- (3) The Registrar-General may provide information referred to in subsection (1) by means of a certificate, statement, visual display unit, computer print-out, microfiche reader or any other means that the Registrar-General considers appropriate.
- (4) The Registrar-General may provide access to information under this section in a way to limit the liability of:
  - (a) the Registrar-General or the Territory;
  - (b) the Commonwealth;
  - (c) a statutory authority of the Territory or the Commonwealth, a local government body or a prescribed organisation; or
  - (d) an employee of the Territory or the Commonwealth or of a statutory authority, local government body or prescribed organisation referred to in paragraph (c),for any omission from, or misstatement or inaccuracy in, the information.
- (5) Information referred to in subsection (1) is not part of the land register.

## **Division 2 Indefeasible title**

### **39 Creation of indefeasible title**

An indefeasible title for a lot is created on the recording of the particulars of the lot in the land register.

### **40 Meaning of *indefeasible title***

The indefeasible title for a lot is the current particulars in the land register about the lot.

### **41 Single indefeasible title for 2 or more lots**

- (1) The Registrar-General may create a single indefeasible title for 2 or more lots that have the same registered owner by including a single set of particulars for the lots in the land register.

- (2) The Registrar-General may act under this section if the lots:
  - (a) share a common boundary; or
  - (b) have a boundary that adjoins the same part of a road, railway or watercourse.
- (3) The Registrar-General may only create a single title under this section if:
  - (a) there is an approval or exemption under the *Planning Act* concerning the consolidation of the lots into the single title; or
  - (b) the title is being created in pursuance of a deed of grant.

#### **42 Separation of single indefeasible title for 2 or more lots**

- (1) If the Registrar-General has created a single indefeasible title for 2 or more lots, the Registrar-General may create separate indefeasible titles for any of the lots by cancelling the single set of particulars for the lots in the land register and including separate particulars for the lots.
- (2) This section does not prevent the Registrar-General from also acting under section 41 for 2 or more of the lots.
- (3) The Registrar-General may only create single titles under subsection (1) if there is an approval or exemption under the *Planning Act* that permits each lot to exist separately from any other lot.

#### **43 Transfer of land forming part of indefeasible title**

If the Registrar-General registers an instrument of transfer of a lot or lots (being only part of the land in the indefeasible title), the Registrar-General must create separate indefeasible titles for the lot or lots transferred and for the lot or lots not transferred by cancelling the single set of particulars for the lots and including separate particulars for the lot or lots not transferred.

### **Division 3 Certificates as to title**

#### **44 Issuing of certificates as to title**

- (1) The Registrar-General must issue a certificate containing the indefeasible title for a lot at the written request of the registered owner.

- (2) However, if the lot is subject to a registered mortgage, the Registrar-General may issue the certificate as to title only if the mortgagee consents to the issue of the certificate.
- (3) Also, if an instrument has been lodged to register an interest in the lot, the Registrar-General may refuse to issue the certificate as to title until the instrument has been registered.
- (4) The Registrar-General may issue a certificate as to title noted by him or her as being qualified as to boundaries if he or she is not satisfied that the description of the lot to which it relates accurately identifies the boundaries of the lot.
- (5) The certificate as to title:
  - (a) is to be in the prescribed form; and
  - (b) subject to a direction from the Minister or to another Act – is to contain a diagram describing the parcel of land to which the certificate relates.
- (6) The Registrar-General may give the certificate as to title to the registered owner:
  - (a) by posting it to the owner or to someone else specified in the owner's request, at the address specified in the request; or
  - (b) by personally giving it to the owner or someone else specified in the request.
- (7) The Registrar-General must give the certificate as to title to the person stated in the owner's request.

**45 Note about issue of certificate as to title etc.**

- (1) If the Registrar-General issues a certificate as to title for a lot, the Registrar-General:
  - (a) must make a note in the particulars for the lot in the land register that the certificate has been issued; and
  - (b) may issue a second certificate only if the first certificate is cancelled.
- (2) The Registrar-General may cancel a certificate as to title, without production of the certificate, if, in accordance with section 153:
  - (a) a dealing is registered without the need for the production of the certificate as to title; and

- (b) a new certificate as to title is issued showing the current registered interests in the lot.

**46            Cancellation of certificate as to title on deposit**

Unless the Registrar-General otherwise directs, a certificate as to title that is deposited in the Land Titles Office is cancelled, whether or not a note of the cancellation is made on it.

**47            Evidentiary effect of certificate as to title**

- (1) A certificate as to title is conclusive evidence of the indefeasible title for the lot when it is issued:
  - (a) other than in the circumstances described in sections 188 and 189; or
  - (b) except as far as the particulars specified in the certificate in fact differ from the indefeasible title.
- (2) In respect of any matter not covered by subsection (1), if there is a conflict, difference or variation between the contents of the land register and a certificate as to title, the land register prevails.

**Part 4            Registration of lands**

**Division 1        Alienation of Crown land**

**48            Alienated Crown land to be registered**

- (1) If land is alienated from the Crown, the deed of grant in the appropriate form must be lodged in the Land Titles Office.
- (2) The Registrar-General must register the deed of grant by recording the particulars of the deed of grant in the land register.
- (3) An indefeasible title is created for the relevant lot when the deed of grant is registered.
- (4) Subsection (3) operates in respect of a crown lease subject to the Act under which the crown lease was granted.
- (5) On receiving a notice from the Minister that a crown lease has been lawfully forfeited or determined in whole or in part, the Registrar-General must make an entry to that effect in the land register.
- (6) The forfeiture or determination has effect when the Registrar-General makes the entry in the land register under subsection (5).

- (7) Subject to subsection (9), the Registrar-General must register the surrender of a crown lease in the land register on the surrender being lodged with the Registrar.
- (8) The surrender is to be in an appropriate form.
- (9) The Registrar-General must not register the surrender of a crown lease unless he or she is satisfied that all persons with a registered interest in the crown lease:
  - (a) consent or agree to the surrender; or
  - (b) have an interest that has a lower priority to the interest of the person who is seeking to surrender the lease.
- (10) In subsection (5), **Minister** means the Minister administering the Act under which the crown lease was forfeited or determined.

#### **49 Alteration of title affecting registered interests**

- (1) In this section, **Crown lease** means a deed of grant in leasehold.
- (2) On lodging an application to register:
  - (a) a surrender of a Crown lease that is subject to registered interests; and
  - (b) a deed of grant (in freehold or leasehold) in respect of land, or part of land, comprised in the surrendered Crown Lease,the applicant may lodge with the application:
  - (c) an application to carry forward the registered interests (limited, if appropriate, to the land specified in the application); and
  - (d) the consent of the registered proprietors of the registered interests.
- (3) On receiving an application under subsection (2), the Registrar-General must register:
  - (a) the surrender; and
  - (b) the deed of grant, subject to the registered interests (limited, if appropriate, to the land specified in the application under subsection (2)(a)).
- (4) On registration under subsection (3), an instrument creating the registered interest is to be taken to have been modified accordingly.



- (5) On lodging an application to register an instrument that adds land to, or removes land from, a registered lot that is subject to registered interests, the applicant may lodge with the application:
  - (a) an application to carry forward the registered interests (limited, if appropriate, to the land specified in the application); and
  - (b) the consent of the registered proprietors of the registered interests.
- (6) On receiving an application under subsection (5), the Registrar-General must register the instrument and issue any new title that he or she considers necessary subject to the registered interests (limited, if appropriate, to the land specified in the application under subsection (5)(a)).
- (7) Subject to subsection (8), on registration under subsection (6) the instrument creating the registered interests is to be taken to have been modified accordingly.
- (8) Registration under subsection (6) does not have the effect of extending to land added to a title to a lot a lease relating to a part only of the land formerly included in the title unless an intention that the lease be extended is indicated in the application for registration.

## **Division 2            Land held by Territory**

### **50            Land held by Territory**

The Territory may acquire, hold and deal with lots under this Act.

## **Division 3            Subdividing lots**

### **51            Subdivision of lot by registering plan of subdivision**

A lot may be subdivided by the registered owner or owners of the fee simple interest registering a plan of subdivision of the lot.

### **52            Requirements for registration of plan of subdivision**

- (1) A plan of subdivision of a lot must:
  - (a) distinctly show all roads, streets, passages, courts, alleys, thoroughfares, cul-de-sacs, squares, parks, water or drainage reserves, reserves or similar open spaces that are to be dedicated to public use;
  - (b) show all proposed lots marked with separate and distinct numbers;

- (c) show all proposed easements and easements in gross; and
  - (d) identify any lots having the benefit or burden of covenants.
- (2) The Registrar-General must not register a plan of subdivision of a lot unless every registered owner and every mortgagee of the lot has consented to the plan of subdivision.
- (3) Without limiting subsection (2), the Registrar-General may refuse to register a plan of subdivision of a lot unless consents to the plan of subdivision are provided by:
- (a) the lessee under any lease;
  - (b) a person who has rights against the lot under a registered writ of execution;
  - (c) a caveator under a caveat affecting any estate or interest in the lot;
  - (d) a person with an interest under an easement;
  - (e) a person with an interest under a restrictive covenant; or
  - (f) any other registered proprietors of any interest in or in respect of the lot.
- (4) The Registrar-General must not require a consent referred to in subsection (3) unless he or she is of the view that the rights under law of a person would be adversely affected by registering the plan of subdivision.
- (5) In determining whether the rights of a person are affected, the Registrar-General must have regard to the Registrar-General's directions.
- (6) The Registrar-General may without giving notice to any person, dispense with the requirement for a person to give his or her consent under this section on receiving from the person seeking to register the plan of subdivision:
- (a) a written application; and
  - (b) an indemnity that the Registrar-General considers appropriate.
- (7) Nothing in this section affects or prejudices a remedy that a person has because of the registering of a plan of subdivision without the person having given his or her consent.

- (8) If the remedy is an action in damages, the damages with costs may be recovered against the Registrar-General if:
  - (a) the person against whom the remedy is available ceases to be liable to pay damages; or
  - (b) the person who is liable to pay the damages is bankrupt, insolvent or cannot be found within Australia.
- (9) If the remedy is an action in damages and a person has failed to ensure that the address for the service of notices is accurate, the person is to be taken to have contributed to his or her loss and the court must take that into account in assessing damages.
- (10) The Registrar-General must not register a dealing that puts a subdivision into effect unless there is a consent granted under Part 5 of the *Planning Act* in relation to the subdivision.
- (11) Without limiting the meaning of ***rights under law*** in subsection (4), a person's rights under a registered interest in land are, whilst the person retains the power to enforce those rights, not affected by the fact that a subdivision of the land may increase the potentiality of a use of the land that may affect the person's use or enjoyment of any land.

### **53            Particulars to be recorded on registration of plan**

In registering a plan of subdivision, the Registrar-General must record in the land register:

- (a) particulars of each proposed lot that is not public use land; and
- (b) particulars of public use land within the meaning of the *Planning Act* for the purposes of section 64 of that Act.

### **54            Division excluding road, railway or watercourse**

- (1) A lot may be divided by a plan of subdivision, even though there is a road, railway or watercourse within the boundaries of the lot that is not part of the lot.
- (2) However, the road, railway or watercourse is not included in any lot created by the plan of subdivision, even though it may be within the boundaries of the lot.

**55 Consolidation not to be registered**

- (1) The Registrar-General must not register an instrument that puts a consolidation, within the meaning of the *Planning Act*, into effect unless there is consent granted under *Planning Act* in relation to the consolidation.
- (2) In subsection (1) **consolidation** has the same meaning as in the *Planning Act*.

**Part 5 Joint holder in lot****56 Registering life interests**

The Registrar-General may record in the land register an interest in a lot for life and an interest in remainder in a lot in the way the Registrar-General considers appropriate.

**57 Registering co-owners**

- (1) In registering an instrument transferring an interest to co-owners, the Registrar-General must also register the co-owners as holding their interests as tenants in common or as joint tenants.
- (2) Subject to this section, if the instrument does not show whether co-owners are to hold as tenants in common or as joint tenants, the Registrar-General must register the co-owners as tenants in common.
- (3) If the instrument was lodged before the commencement of this Act and the instrument does not show whether the co-owners are to hold as tenants in common or as joint tenants, the Registrar-General must register the co-owners as joint tenants.
- (4) If the instrument was lodged before the commencement of this Act, the Registrar-General may register the co-owners as joint tenants if he or she is satisfied that the co-owners intended to hold as joint tenants.

**58 Separate indefeasible titles for tenants in common**

- (1) If a lot is, or is to be held, by 2 or more registered owners as tenants in common, the Registrar-General may create a separate indefeasible title for the interest of each owner by including a separate set of particulars in the land register for the interest of each owner.
- (2) The Registrar-General may act under this section at the request of an owner.

**59 Severing joint tenancy**

- (1) A registered owner of a lot that is subject to a joint tenancy may unilaterally sever the joint tenancy by registering a transfer executed by the registered owner.
- (2) The Registrar-General must not register the instrument of transfer unless the registered owner satisfies the Registrar-General that a copy of the instrument has been given to all other joint tenants.
- (3) On the instrument of transfer being registered, the registered owner becomes entitled as a tenant in common with the other registered owners.
- (4) If there are more than 2 joint tenants of the lot, the joint tenancy of the other registered owners is not affected.

**Part 6 Dealings directly affecting lots**

**Division 1 Transfers**

**60 Registering transfer**

- (1) Subject to subsections (2) and (3), a lot or an interest in a lot may be transferred by registering an instrument of transfer for the lot or interest.
- (2) To remove any doubt, except as provided in subsection (4), a part of a lot cannot be transferred.
- (3) A covenant in gross may only be transferred to a body referred to in section 168 of the *Law of Property Act*.
- (4) Subsection (2) does not prevent the transfer of a part of a lot:
  - (a) where there has been a compulsory acquisition;
  - (b) where the subdivision is an excluded subdivision in terms of the *Planning Act*;
  - (c) where the transfer is occurring as part of the obligations of the Registrar-General under the *Control of Roads Act*; or
  - (d) in prescribed circumstances.

**61 Requirements of instrument of transfer**

- (1) An instrument of transfer for a lot or any interest in a lot must:
  - (a) be validly executed;
  - (b) include particulars sufficient to identify:
    - (i) the lot to be transferred; or
    - (ii) the lot to which the interest applies;
  - (c) include the value of the lot and the details of any consideration; and
  - (d) for an interest in a lot – include a description sufficient to identify the interest to be transferred.
- (2) Subsection (1) does not limit the matters that the appropriate form for an instrument of transfer may require to be included in the instrument.
- (3) In specified classes of cases, the Registrar-General may, in accordance with the Registrar-General's directions, waive the requirements that:
  - (a) the transfer be executed by the transferee; or
  - (b) the value of the lot be included in the instrument of transfer.

**62 Effect of registration of transfer**

- (1) On an instrument of transfer for a lot or an interest in a lot being registered, all the rights, powers, privileges and liabilities of the transferor in relation to the lot vest in the transferee.
- (2) Without limiting subsection (1), the registered transferee of a registered mortgage is bound by and liable under the mortgage to the same extent as the original mortgagee.
- (3) Without limiting subsection (1), the registered transferee of a registered lease is bound by and liable under the lease to the same extent as the original lessee.
- (4) In this section, **rights**, in relation to a mortgage or lease, includes the right to sue on the terms of the mortgage or lease and to recover a debt or enforce a liability under the mortgage or lease.

**63 Transfer of mortgaged lot**

- (1) If a lot, or an interest in a lot, that is subject to a registered mortgage is transferred, the transferee is liable:
  - (a) to comply with the terms of the mortgage and the terms implied by an Act; and
  - (b) to indemnify the transferor against liability under the mortgage and under this or another Act.
- (2) If a lot is transferred to a mortgagee of the lot, the Registrar-General must register the mortgagee as registered owner released from the mortgage.
- (3) The Registrar-General must act under subsection (2) unless the mortgagee asks the Registrar-General not to act under the subsection.

**64 Transfer pursuant to statutory vesting or grant**

- (1) If the Registrar-General is satisfied that land or any interest in land has become vested in or granted to a person by or under an Act (including an Act of the Commonwealth), the Registrar-General:
  - (a) must make in the land register entries in relation to the land that he or she considers necessary in connection with the vesting or grant; and
  - (b) may issue certificates as to title that he or she thinks fit in consequence of the vesting or granting of the land or interest and, if it is necessary or appropriate, cancel any existing certificate as to title.
- (2) The Registrar-General may exercise the power conferred by subsection (1):
  - (a) on an application in the appropriate form; or
  - (b) on his or her own motion.

**Division 2 Leases**

**65 Registering a lease**

A lot or part of a lot may be leased by registering an instrument of lease for the lot or part of the lot.

## **66 Requirements of instrument of lease**

- (1) An instrument of lease must:
  - (a) be validly executed;
  - (b) include a description sufficient to identify the lot or part of the lot to be leased; and
  - (c) include an acknowledgement of the amount paid or details of other consideration.
- (2) If the instrument of lease is for part of the lot, the instrument must also include:
  - (a) a sketch plan identifying the part of the lot drawn to a standard to the Registrar-General's satisfaction or a plan of survey identifying the part of the lot, if required by the Registrar-General; and
  - (b) if required by the *Planning Act* – consent under Part 5 of the *Planning Act*.
- (3) However, the Registrar-General must allow the part of the lot to be identified by a description alone if the Registrar-General is satisfied the part of a lot is sufficiently identified by the description in the instrument.
- (4) This section does not limit the matters that the appropriate form for an instrument of lease may require to be included in the instrument.

## **67 Validity of lease or amendment of lease against mortgagee**

A lease or amendment of a lease executed after registration of a mortgage of a lot is valid against the mortgagee only if the mortgagee consents to the lease or amendment before its registration.

## **68 Renewing and extending a lease**

- (1) The Registrar-General may register the renewal or an extension of the term of a lease.
- (2) The Registrar-General may record in the land register that a lease has expired.
- (3) Despite that a lease has on the face of the land register expired without having been renewed or extended, the Registrar-General may register a notice executed by the lessee and the lessor that sets out that the lease has been extended or renewed.



- (4) For the purposes of sections 188 and 189, the date of the registration of a notice under subsection (3) is the date of registration of the lease as renewed or extended.

### **69 Amending a lease**

- (1) In this section, **term**, of a registered lease, includes a period of possession under the lease because of:
- (a) the exercise of an option to renew in the lease; or
  - (b) a registered instrument of amendment extending the term of the lease.
- (2) A registered lease may be amended by registering an instrument of amendment of the lease.
- (3) However, the instrument of amendment must not:
- (a) add or remove a party to a lease; or
  - (b) be lodged after the lease's term has ended.
- (4) The procedure for amending a lease is in addition to other rights that are not inconsistent with this Act.

### **70 Re-entry by lessor**

- (1) If a lessor under a registered lease lawfully re-enters and takes possession under the lease or an Act, the lessor may lodge a request for the Registrar-General to register the re-entry.
- (2) The registering of the request for the re-entry does not release the lessee from liability in respect of a breach of any covenant, either express or implied, in the lease.

### **71 Surrendering a lease**

- (1) A registered lease may be wholly or partly surrendered by operation of law or by registering an instrument of surrender of the lease executed by the lessor and the lessee.
- (2) However, a registered lease may be surrendered by registering an instrument of surrender only with the consent of every mortgagee and sublessee of the lessee.
- (3) If an instrument of surrender is lodged, the Registrar-General must:
- (a) register the instrument; and

- (b) record the date of surrender specified in the instrument in the land register.
- (4) The interest of the lessee in a registered lease vests in the lessor on registering the instrument of surrender.
- (5) The Registrar-General may make an entry in the land register of the surrender of a lease on receiving an application in the prescribed form from the lessor and the lessor producing any evidence that the Registrar-General may require that the lessee has abandoned his or her occupation of the land comprised in the lease.
- (6) This section does not apply to a surrender or disclaimer under a law about bankruptcy.

## **72 Disclaimer in bankruptcy**

- (1) The Registrar-General may register a disclaimer of a lease or other interest in a lot under a law about bankruptcy only if the disclaimer, signed by the Official Trustee in Bankruptcy or registered trustee, and a request to register it is lodged.
- (2) The disclaimer operates as a surrender of the lease on it being registered.
- (3) If the lease is mortgaged, a mortgagee may apply to the Registrar-General to register a notice of foreclosure.
- (4) A notice of foreclosure must be accompanied by the disclaimer.
- (5) On the notice of foreclosure being registered:
  - (a) the estate or interest of the bankrupt in the lease vests in the mortgagee free from all other charges; and
  - (b) the Registrar-General must register the mortgagee as registered proprietor of the lease.
- (6) A notice of foreclosure must not be registered unless the Registrar-General is satisfied that the mortgagee:
  - (a) has given 14 days written notice of his or her intended application to every subsequent mortgagee of the lease; or
  - (b) has obtained the written consent of every subsequent mortgagee of the lease.
- (7) A subsequent mortgagee may pay to the mortgagee the amount due to the mortgagee under the mortgage, with costs, at any time before foreclosure.

- (8) On paying the amount under subsection (7), the subsequent mortgagee is entitled to a transfer from the mortgagee of the mortgage.

**73 Validity of unregistered lease**

Despite section 184, but subject to sections 188 and 189, an unregistered lease of a lot or part of a lot operates as a lease at law as between the parties to the document creating the lease.

**Division 3 Mortgages**

**Subdivision 1 General**

**74 Mortgaging lot etc. by registration**

A lot or an interest in a lot may be mortgaged by registering an instrument of mortgage for the lot or interest.

**75 Requirements of instrument of mortgage**

- (1) An instrument of mortgage must:
- (a) be validly executed;
  - (b) include a description sufficient to identify the lot to be mortgaged;
  - (c) include a description of the debt or liability secured by the mortgage; and
  - (d) include a description sufficient to identify the interest to be mortgaged.
- (2) Subsection (1) does not limit the matters that the appropriate form for an instrument of mortgage may require to be included in the form.

**76 Effect of registering a mortgage**

A registered mortgage of a lot or an interest in a lot operates only as a charge on the lot or interest for the debt or liability secured by the mortgage.

**77 Equitable mortgage**

- (1) An equitable mortgage of a lot may be created by leaving a certificate as to title with the mortgagee.

- (2) Subsection (1) does not affect the ways in which an equitable mortgage may be created.

## **78 Amending a mortgage**

- (1) A registered mortgage may be amended by registering an instrument of amendment of the mortgage.
- (2) An instrument of amendment cannot add or remove a party to the mortgage.

## **79 Amending priority of mortgages**

- (1) The priority of registered mortgages may be amended by registering an instrument amending priority.
- (2) The instrument amending priority must:
  - (a) specify the order of priority of all affected registered mortgages; and
  - (b) be executed by all mortgagees affected by the amendment.
- (3) On the instrument being registered the mortgages have priority in the order specified in the instrument.
- (4) If there is a registered mortgage intervening between any 2 mortgages whose priority an instrument under subsection (1) purports to vary, the Registrar-General must not register the memorandum unless the proprietor of the intervening mortgage is also a party to it.

## **80 Powers of mortgagee**

- (1) A registered mortgagee of a lot has the powers and liabilities of a mortgagee under Part 7 of the *Law of Property Act*.
- (2) The powers in this section are in addition to other powers exercisable by the mortgagee.

## **81 Effect of transfer after sale by mortgagee**

- (1) If an instrument of transfer executed by a registered mortgagee after the exercise of the power of sale under the mortgage is registered, registration of the instrument vests in the transferee the mortgagor's interest that is transferred, free from liability under:
  - (a) the mortgage and (except where the mortgagor is the purchaser) any other mortgage registered after it; and

- (b) any other interest registered after it except:
  - (i) a lease, easement or covenant to which the mortgagee has consented in writing or to which he or she is a party; or
  - (ii) a mortgage, easement or other right that is for any reason binding on the mortgagee.
- (2) The registration of a transfer by a mortgagee exercising a power of sale is not prevented by a caveat or an instrument that has effect as a caveat if the caveat or instrument relates to an estate, interest or right to which the mortgage has priority.
- (3) On the transfer being registered any caveat and the registration of any instrument referred to in subsection (2) is to be taken to have been cancelled.

## **82 Liability of mortgagee in possession of leased lot**

- (1) A mortgagee of a leasehold interest in a lot who enters into possession under the lease (whether by taking the rents or profits or in another way) is liable under the lease to the same extent as the lessee was liable under the lease before the mortgagee entered into possession.
- (2) However, the liability of the mortgagee under the lease is limited to the amounts of rents, profits or other benefits received by the mortgagee during the mortgagee's possession.

## **83 Discharge of mortgage**

- (1) On an instrument discharging a mortgage being lodged, the Registrar-General may register the discharge to the extent shown in the instrument.
- (2) The instrument of discharge may discharge the debt or liability secured for:
  - (a) all or part of the mortgage; or
  - (b) one or more of the mortgagors.
- (3) On the instrument of discharge being registered:
  - (a) the mortgage is discharged; and
  - (b) the lot is released from the mortgage,  
to the extent shown in the instrument.

#### **84 Discharge of annuity**

- (1) On an application being made in accordance with subsection (2), the Registrar-General must make an entry in the land register noting that an annuity or sum of money is satisfied and discharged.
- (2) The application is to be in the appropriate form and is to be accompanied by:
  - (a) proof of:
    - (i) the death of the annuitant; or
    - (ii) the occurrence of the event or circumstance on which the annuity or sum of money secured ceases to be payable in accordance with the mortgage; and
  - (b) proof that all arrears of the annuity or money have been paid, satisfied or discharged.
- (3) On the entry being made in the land register, a lot comprised in the mortgage ceases to be subject to or liable for the annuity or sum of money.

#### **85 Registering order for foreclosure**

- (1) The Registrar-General may, on application, register an order for foreclosure made under the *Law of Property Act*.
- (2) An application under subsection (1) is to contain the information that is prescribed under this Act or another Act or under any rules of court.

### **Subdivision 2 Statutory charges**

#### **86 Registration of statutory charges**

- (1) A person for whose benefit a statutory charge is established by or under a law in force in the Territory may apply to the Registrar-General to have the charge registered.
- (2) The application is to be in the appropriate form and accompanied by the prescribed fee.
- (3) On receiving the application, the Registrar-General must register the statutory charge.
- (4) The Registrar-General must give notice of the registration of the statutory charge to all persons who have a registered interest in the land the subject of the charge.

**87 Deemed mortgage**

- (1) The registered owner of a lot that is subject to a registered statutory charge relating to the payment of money is to be taken to have executed an instrument of mortgage to secure the payment of the statutory charge subject to the terms and conditions, if any, under the law by which the statutory charge was established.
- (2) The person entitled to the benefit of the statutory charge is to be taken to be the mortgagee of the deemed mortgage referred to in subsection (1), and has the powers of a mortgagee under this Act.

**88 Priority and effect of statutory charges**

- (1) An overriding statutory charge prevails over all other interests in the lot to which it relates, except a pre-existing overriding statutory charge recorded in the land register.
- (2) Unless a statutory charge is registered:
  - (a) a restriction imposed by the statutory charge on the use of or dealing with the lot does not exist; or
  - (b) a power arising under the statutory charge in relation to the lot is not exercisable.

**89 Statutory charges and power of sale**

- (1) Before the person entitled to the benefit of a statutory charge exercises a power of sale under the charge, the person must give to the registered owner of the land not less than 28 days notice of the proposed exercise of the power.
- (2) The notice is to:
  - (a) be in the approved form; and
  - (b) contain particulars of the action that the registered owner may take in order to avoid the exercise of the power of sale and the period within which the action may be taken.
- (3) If the registered owner does not take the action specified in the notice within the time specified, the person entitled to the benefit of the statutory charge may, subject to Part 7 of the *Law of Property Act*, exercise the powers of a mortgagee concerning the sale or foreclosure of land.

## **90 Removing statutory charge**

- (1) A person who has a registered interest in land that has been subject to a registered statutory charge for more than 5 years may apply to the Registrar-General to have the statutory charge removed.
- (2) The application is to be accompanied by the prescribed fee.
- (3) On receiving the application, the Registrar-General is to give written notice of the application to the person entitled to the benefit of the charge.
- (4) The notice is to specify that if the person does not give the Registrar-General notice within the period specified in the notice, the Registrar-General will remove the statutory charge from the land register.
- (5) The period specified in the notice cannot be less than 30 days.
- (6) If the person gives the Registrar-General notice in the appropriate form and pays the prescribed fee within the time specified in the notice, the Registrar-General must not remove the statutory charge from the land register.
- (7) If the person does not give the Registrar notice within the time specified in the notice, the Registrar-General must remove the statutory charge from the land register.

## **Division 4 Easements**

### **Subdivision 1 General**

#### **91 Creation of easement or easement in gross by registration**

Subject to Subdivision 2, an easement or an easement in gross over a lot may be created by registering:

- (a) a deed of grant granting or reserving an easement or easement in gross; or
- (b) an instrument of easement or easement in gross.

#### **92 Requirements of instrument of easement or easement in gross**

- (1) An instrument of easement must:
  - (a) be validly executed; and



- (b) if required by the Registrar-General – include a plan of survey identifying the lot or part of a lot to be benefited by the easement and the lot or part of a lot to be burdened by the easement.
- (2) An instrument of easement in gross must:
- (a) be validly executed;
  - (b) include a sketch plan identifying the lot or part of a lot to be burdened by the easement in gross; and
  - (c) identify the persons having the benefit of the easement in gross.
- (3) This section does not limit the matters that the appropriate form for an instrument of easement or easement in gross may require to be included in the form.

**93 Consents**

The instrument of easement or easement in gross must include the consents of all registered mortgagees of the lot burdened by the easement or easement in gross.

**94 Limitation of easements or easements in gross**

An easement or easement in gross may be limited wholly or partly in height, depth or both.

**95 Easement benefiting and burdening same registered owner's lots**

An instrument of easement may be registered even if:

- (a) the lot benefited and the lot burdened by the easement have, or are to have, the same registered owner; or
- (b) the owner of the lot benefited by the easement holds an interest in the lot burdened by the easement.

**96 Same person becoming registered owner of benefited and burdened lots**

If the same person becomes the registered owner of the lot benefited and the lot burdened by an easement, the easement is extinguished only if:

- (a) the registered owner asks the Registrar-General to extinguish the easement; or

- (b) the Registrar-General creates a single indefeasible title for the lots.

**97 Owner of benefited land acquiring interest in burdened land**

An easement is not extinguished merely because the owner of the lot benefited by the easement acquires an interest, or a greater interest, in the lot burdened by the easement.

**98 Extinguishment of easement or easement in gross**

- (1) A registered easement or easement in gross may be wholly or partly extinguished by registering an instrument of extinguishment of the easement or easement in gross.
- (2) The instrument of extinguishment of an easement may be signed by:
  - (a) the registered owners of the lots burdened and benefited by the easement; or
  - (b) only the registered owner of the lot benefited by the easement.
- (3) The instrument of extinguishment of an easement in gross may be signed by only the person in whose favour the easement in gross is registered.
- (4) Subject to this section, a registered easement may be extinguished only if all registered mortgagees and lessees of the lot benefited by the easement consent to the extinguishment.
- (5) Subsection (4) does not apply to a lessee who does not receive a benefit from the easement.
- (6) The Registrar-General must:
  - (a) on the application of a person who has a registered interest in land that has been subject to a registered easement for more than 5 years, and
  - (b) on payment of the prescribed fee,give written notice to the person entitled to the benefit of the registered easement.
- (7) The notice is to state that on the expiration of the period, of not less than 28 days as specified in the notice, the Registrar-General will remove the registered easement from the register unless within the period the person entitled to the benefit of the easement gives to the Registrar-General a notice in the approved form accompanied

by the prescribed fee.

- (8) If the person does not give notice in accordance with subsection (7), the Registrar-General may remove the registered easement from the register.

## **99 Amending easement or easement in gross**

- (1) A registered easement or easement in gross may be amended by registering an instrument of amendment of the easement or easement in gross.
- (2) An instrument of amendment cannot change a party to the easement or easement in gross.

## **100 Application of *Law of Property Act***

Divisions 1, 2, 3 and 5 of Part 9 the *Law of Property Act* apply to a registered easement or easement in gross.

## **Subdivision 2 Creating easements or easements in gross by registration of plans of subdivision**

### **101 Easement or easement in gross only created in accordance with subdivision**

The registering of a plan of subdivision creates an easement or easement in gross only if the plan and any instrument of easement or easement in gross required by section 103 or lodged under section 105 is registered under this Subdivision.

### **102 Creation of easement or easement in gross by plan of subdivision**

An easement or easement in gross may be created by registering a plan of subdivision showing:

- (a) the nature and location of the easement or easement in gross to be created;
- (b) the lot or part of the lot to be burdened by the easement or easement in gross;
- (c) in the case of an easement – the lot or part of a lot to be benefited by the easement; and
- (d) in the case of an easement in gross – the persons who have the benefit of the easement in gross.

**103 Instrument of easement or easement in gross to be lodged**

If the easement or easement in gross to be created is not an easement or easement in gross having the rights or powers described in Schedule 3 to the *Law of Property Act*, an appropriate instrument must be lodged with the plan of subdivision.

**104 Rights created on registration of plan and instrument**

On a plan and any instrument being registered under this Subdivision, the proposed easement or easement in gross is created and vests in the person entitled to the benefit of it.

**105 Instrument of easement or easement in gross may be lodged**

An instrument of easement or easement in gross may be lodged with the plan of subdivision.

**Division 5 Covenants**

**Subdivision 1 General**

**106 Creation of covenants and covenants in gross**

Subject to Subdivision 2, a covenant or a covenant in gross over a lot may be created by registering:

- (a) a deed of grant reserving a covenant or covenant in gross; or
- (b) an instrument of covenant or covenant in gross.

**107 Requirements of instrument of covenant or covenant in gross**

- (1) An instrument of covenant must:
  - (a) be validly executed; and
  - (b) include a description or sketch plan sufficient to identify the lot or part of the lot to be benefited by the covenant and the lot or part of the lot to be burdened by the covenant.
- (2) An instrument of covenant in gross must:
  - (a) be validly executed;
  - (b) include a description or sketch plan sufficient to identify the lot or part of the land to be burdened by the covenant in gross; and
  - (c) identify the person having the benefit of the covenant in gross.

- (3) This section does not limit the matters that the appropriate form for an instrument of covenant or covenant in gross may require to be included in the form.

**108 Consents**

The instrument of covenant or covenant in gross must include the consents of all registered mortgagees of the lot burdened by the covenant or covenant in gross.

**109 Covenants benefiting and burdening same registered owner's lots**

An instrument of covenant may be registered even if:

- (a) the lot benefited and the lot burdened by the covenant have or are to have the same registered owner; or
- (b) the owner of the lot benefited by the covenant holds an interest in the lot burdened by the covenant.

**110 Same person becoming registered owner of benefited and burdened lots**

If the same person becomes the registered owner of the lot benefited and the lot burdened by a covenant, the covenant is extinguished only if:

- (a) the registered owner asks the Registrar-General to extinguish the covenant; or
- (b) the Registrar-General creates a single indefeasible title for the lots.

**111 Owner of benefited land acquiring interest in burdened land**

A covenant is not extinguished merely because the owner of the lot benefited by the covenant acquires an interest or greater interest in the lot burdened by the covenant.

**112 Extinguishment of covenants or covenants in gross**

- (1) A registered covenant or covenant in gross may be extinguished by registering an instrument of extinguishment of the covenant or covenant in gross.
- (2) The instrument of extinguishment of covenant may be signed by:
  - (a) the registered owners of the lots burdened and benefited by the covenant; or

- (b) only the registered owner of the lot benefited by the covenant.
- (3) The instrument of extinguishment of a covenant in gross may be signed by only the person in whose favour the covenant in gross is registered.
- (4) Subject to this section, a registered covenant may be extinguished only if all registered mortgagees and lessees of the lot benefited by the covenant consent to the extinguishment.
- (5) Subsection (4) does not apply to a lessee who does not receive a benefit from the covenant.
- (6) A registered covenant may be extinguished in accordance with section 174 and Division 5 of Part 9 of the *Law of Property Act*.
- (7) The Registrar-General must:
  - (a) on the application of a person who has a registered interest in land that has been subject to a registered covenant for more than 5 years; and
  - (b) on payment of the prescribed fee,give written notice to the person entitled to the benefit of the registered covenant.
- (7A) The notice is to state that on the expiration of the period, of not less than 28 days as specified in the notice, the Registrar-General will remove the registered covenant from the register unless within the period the person entitled to the benefit of the covenant gives to the Registrar-General a notice in the approved form accompanied by the prescribed fee.
- (8) If the person does not give notice in accordance with subsection (7A), the Registrar-General may remove the registered covenant from the register.

### **113 Amending covenant or covenant in gross**

- (1) A registered covenant or covenant in gross may be amended by registering an instrument of amendment of the covenant or covenant in gross.
- (2) An instrument of amendment cannot change a party to the covenant or covenant in gross.

**114 Application of *Law of Property Act***

Divisions 1, 4 and 5 of Part 9 of the *Law of Property Act* apply to a registered covenant or covenant in gross.

**Subdivision 2 Creating covenants by registration of plans of subdivision**

**115 Covenant only created in accordance with subdivision**

Registration of a plan of subdivision creates a covenant only if the plan and instrument of covenant is registered under this Subdivision.

**116 Creation of covenant by plan of subdivision**

- (1) A covenant may be created by registering:
  - (a) a plan of subdivision showing clearly the lots or parts of lots to be benefited and the lots or parts of lots to be burdened by the covenant to be created on the plan's registration; and
  - (b) an instrument of covenant validly executed.
- (2) The instrument must specify:
  - (a) the nature of the covenant and its terms; and
  - (b) the lot or part of the lot to be benefited and the lot or part of the lot to be burdened by the covenant.
- (3) For the avoidance of doubt, a lot may be shown on a plan of subdivision as having both the benefit and the burden of a covenant.

**117 Rights created on registration of plan and instrument**

On a plan and instrument being registered under this Subdivision, the proposed covenant is created and vests in the person entitled to the benefit of it.

**Division 6 Profits a prendre**

**118 Profit a prendre by registration**

A profit a prendre over a lot may be created by registering an instrument of profit a prendre.

**119 Requirements of instrument of profit a prendre**

- (1) An instrument of a profit a prendre must:
  - (a) be validly executed;
  - (b) include a description or sketch plan sufficient to identify the lot or part of the lot to be burdened by the profit a prendre and the lot or part of the lot to be benefited by the profit a prendre; and
  - (c) include a description of the profit a prendre to which the lot is to be burdened, including the period for which the profit a prendre is to be enjoyed.
- (2) Subsection (1) does not limit the matters that the appropriate form for an instrument of profit a prendre may require to be included in the form.

**120 Profits a prendre benefiting and burdening same registered owner's lots**

If a lot is to be benefited by a profit a prendre, the instrument of a profit a prendre may be registered even if:

- (a) the lot benefited and the lot burdened by the profit a prendre have or are to have, the same registered owner; or
- (b) the owner of the lot benefited by the profit a prendre holds an interest in the lot burdened by the profit a prendre.

**121 Same person becoming registered owner of benefited and burdened lots**

If a lot is benefited by a profit a prendre, and the same person becomes the registered owner of the lot benefited and the lot burdened by the profit a prendre, the profit a prendre is extinguished only if:

- (a) the registered owner asks the Registrar-General to extinguish the profit a prendre; or
- (b) the Registrar-General creates a single indefeasible title for the lots.

**122 Owner of benefited land acquiring interest in burdened land**

If a lot is benefited by a profit a prendre, the profit a prendre is not extinguished merely because the owner of the lot benefited by the profit a prendre acquires an interest or a greater interest in the lot burdened by the profit a prendre.



**123 Amending instrument of profit a prendre**

- (1) A profit a prendre may be amended by registering an instrument of amendment of the profit a prendre.
- (2) An instrument of amendment cannot add or remove a party to the profit a prendre.

**124 Releasing or removing profit a prendre**

- (1) On an instrument being lodged releasing a profit a prendre to which a lot is subject, the Registrar-General may register the release to the extent shown in the instrument of release.
- (2) On the instrument of release being registered, the profit a prendre is discharged, and the lot is released from the profit a prendre, to the extent shown in the instrument of release.
- (3) The Registrar-General may remove a profit a prendre from the indefeasible title for a lot if a request to remove the profit a prendre is lodged and it is clearly established that:
  - (a) the period of time for which the profit a prendre was intended to subsist has ended; or
  - (b) the event on which the profit a prendre was intended to end has happened.

**Division 7 Trusts, deceased estates and bankruptcy**

**125 How trusts may be registered**

A person may be registered as trustee of an interest in a lot only by the registration of:

- (a) an instrument of transfer of the interest to the person as trustee; or
- (b) a request to vest the interest in the person as trustee.

**126 Instrument of transfer to trustee**

- (1) An instrument of transfer may be lodged:
  - (a) to transfer an interest in a lot to a trustee; or
  - (b) by the registered owner to declare that the registered owner holds the interest in a lot as trustee.
- (2) The Registrar-General may register the instrument of transfer.

**127 Instrument to vest in trustee**

- (1) A request to vest may be lodged to vest an interest in a lot in a trustee.
- (2) A request to vest must give effect to an order made under the *Trustee Act* or another Act.
- (3) The Registrar-General may register the request to vest.
- (4) The order referred to in subsection (2) must be deposited with the request to vest.

**128 Sale, mortgage etc. by trustee**

In the absence of a caveat, a person registered as trustee of an interest in a lot is, for the purpose of a sale, mortgage or contract for valuable consideration of or relating to land under this Act, to be taken to be the absolute proprietor of the interest in the lot freed from all trusts.

**129 Registering personal representative**

- (1) A person may lodge an application to be registered as personal representative for a registered proprietor of a lot or an interest in a lot who has died.
- (2) The Registrar-General may register the lot or the interest in the lot in the name of the person as personal representative if:
  - (a) the person has obtained a grant of representation or the resealing of a grant of representation in the Territory; and
  - (b) the grant or resealing (or an office copy of the grant or resealing issued by the Supreme Court) is deposited.

**130 Form of application**

An application under section 129 must state:

- (a) the lot to which the application refers;
- (b) the interest for which registration is sought; and
- (c) the nature of other interests in the lot known to the applicant.

**131 Transmission on bankruptcy**

- (1) The Registrar-General may register a transmission of an interest in a lot under a law about bankruptcy only if a request to register the transmission is lodged.

- (2) A person registered as the holder of an interest in a lot under subsection (1) is to be taken to be the proprietor of the lot for the purpose of any dealing with the lot.

## **Part 7            Other dealings**

### **Division 1        Writs of execution**

#### **132            Registering writ of execution**

The Registrar-General may register a writ of execution only if a request to register it and an office copy of it is lodged.

#### **133            Effect of registering writ of execution**

For purchasers, lessees, mortgagees and creditors, a writ of execution:

- (a) cannot bind or affect registered lots until it is registered, whether or not there is actual or constructive notice of the writ; and
- (b) binds or affects registered lots only if the writ is executed and put in force within:
  - (i) 12 months after the date it is issued; or
  - (ii) an extended time allowed by the court if the extension is filed and notified to the Registrar-General.

#### **134            Cancellation of registration**

Registration of a writ of execution may be cancelled if:

- (a) a request to cancel it is lodged; and
- (b) the Registrar-General is satisfied that the time or extended time for executing and putting the writ into force has ended.

#### **135            Discharging or satisfying writ of execution**

- (1) If a writ of execution has been satisfied or discharged, the Registrar-General may, on application, register that fact.
- (2) An application under subsection (1) is to be in the appropriate form and may be made by a registered proprietor of an interest in the land.

**136            Transfer of lots sold in execution**

- (1) If a lot is sold under a registered writ of execution, the sheriff, registrar or clerk of the court of the relevant court may execute an instrument of transfer to the purchaser.
- (2) On the transfer being registered, the transferee becomes the registered owner of the lot subject to:
  - (a) registered interests; and
  - (b) equitable mortgages notified by caveat lodged before the writ of execution was registered.

**Division 2            Caveats**

**137            Requirements of caveats**

- (1) A caveat must be signed by or for the caveator.
- (2) The caveat must state:
  - (a) the name of the caveator;
  - (b) an address where documents can be served on the caveator;
  - (c) unless the Registrar-General dispenses with it, the name and address of:
    - (i) the registered owner of the lot affected by the caveat; and
    - (ii) anyone else having the right to deal with the lot affected by the caveat;
  - (d) the registered interest affected by the caveat;
  - (e) the lot affected by the caveat or, if the caveat relates to only a part of a lot, a description of the affected part;
  - (f) the interest claimed by the caveator;
  - (g) the grounds on which the interest is claimed; and
  - (h) the extent of the prohibitions as to dealings.
- (3) This section applies to all caveats under this Act.

### **138        Lodging a caveat**

- (1) A caveat may be lodged by any of the following:
  - (a) a person claiming an interest in a lot;
  - (b) the Registrar-General under section 18;
  - (c) the registered owner of the lot;
  - (d) a person to whom an Australian court has ordered that an interest in a lot be transferred;
  - (e) a person who has the benefit of a subsisting order of an Australian court in restraining a registered proprietor from dealing with a lot.
- (2) A caveat may be lodged by the agent of a person referred to in subsection (1)(a), (c), (d) or (e).

### **139        Notifying caveat**

The Registrar-General must give written notice of lodgment of a caveat to each person whose interest or whose right to registration of an instrument is affected by the caveat.

### **140        Effect of lodging caveat**

- (1) A caveat lodged under this Act prevents registration of another instrument affecting the lot over which the caveat is lodged from the date and time endorsed by the Registrar-General on the caveat as the caveat's date and time of lodgment.
- (2) Subsection (1) has effect for a caveat until the caveat lapses or is cancelled, rejected, removed or withdrawn.
- (3) The lodging of a caveat does not prevent registration of the following:
  - (a) an instrument specified in the caveat as an instrument to which the caveat does not apply;
  - (b) an instrument if the caveator consents to it being registered;
  - (c) an instrument executed by a mortgagee whose interest was registered before the caveat was lodged if:
    - (i) the mortgagee has power under the mortgage to execute the instrument; and

- (ii) the caveator claims an interest in the lot as security for the payment of money or money's worth;
  - (d) an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before the caveat was lodged;
  - (e) another interest that if it is registered will not affect the interest claimed by the caveator.
- (4) The exceptions in subsection (3)(c) and (d) do not apply to a caveat lodged by the Registrar-General.
- (5) The exception in subsection (3)(d) does not apply to a caveat lodged by the registered owner.

**141        Withdrawing caveat**

A caveator may withdraw a caveat by lodging a request to withdraw it.

**142        Automatic lapsing of caveat**

- (1) This section applies to a caveat unless:
- (a) it is lodged by the registered owner;
  - (b) the consent of the registered owner is deposited when the caveat is lodged;
  - (c) an office copy of a court order mentioned in section 138(1)(d) or (e) is deposited when the caveat is lodged;
  - (d) it is lodged by the Registrar-General under section 18; or
  - (e) it is lodged other than under this Division.
- (2) Subject to this section, a caveat to which this section applies lapses at the time specified in subsection (5) or (7).
- (3) A caveatee of a caveat to which this section applies may serve on the caveator a notice requiring the caveator to start a proceeding in a court to establish the interest claimed under the caveat.
- (4) The caveatee must notify the Registrar-General within 14 days of service of the notice on the caveator.
- (5) Except as provided in subsection (6), the caveat lapses:
- (a) 14 days after notice is served on the caveator under subsection (3); or

- (b) 3 months after the caveat is lodged under section 138, whichever is earlier.
- (6) Despite subsection (5), the caveat does not lapse:
  - (a) if an appropriate proceeding has been started by the caveator and the Registrar-General has been notified of the proceeding; or
  - (b) if the caveator notifies the Registrar-General within 14 days of being served with the notice under subsection (3) that he or she does not want the caveat to lapse and that he or she has started, or will start, a proceeding to establish the interest claimed under the caveat.
- (7) If a caveator has notified the Registrar-General under subsection (6)(b) that he or she will start a proceeding, the caveat lapses 3 months after the notice under subsection (3) was served on the caveator if the caveator does not, within that time, provide the Registrar-General with evidence that the proceedings have been started.
- (8) The Registrar-General may remove a caveat that has lapsed from the land register.

### **143        Removing caveat**

- (1) A caveatee may at any time apply to the Supreme Court for an order that a caveat be removed.
- (2) The Supreme Court may make the order whether or not the caveator has been served with the application, and may make the order on the terms it considers appropriate.

### **144        Cancelling caveat**

- (1) The Registrar-General may cancel a caveat if a request to cancel the caveat is lodged and the Registrar-General is satisfied that:
  - (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn;
  - (b) the claim of the caveator has been settled by agreement or otherwise satisfied; or
  - (c) the nature of the interest claimed does not entitle the caveator to prevent registration of an instrument that has been lodged.

- (2) The Registrar-General must notify the caveator of the Registrar-General's intention to cancel the caveat at least 7 days before cancelling it.
- (3) If an instrument that has been lodged will on being registered give full effect to an interest claimed in a caveat, the Registrar-General may remove the caveat immediately before registering the instrument.

**145        Further caveat**

If a caveat lapses or is withdrawn, cancelled or removed from a lot, the person who was the caveator may lodge another caveat for the lot on the same, or substantially the same, grounds only with the Supreme Court's leave.

**146        Compensation for improper caveat**

- (1) A person who lodges or continues a caveat without reasonable cause must compensate anyone else who suffers loss or damage as a result.
- (2) In a proceeding for compensation under subsection (1), the Supreme Court may include in a judgment for compensation a component for exemplary damages.
- (3) In a proceeding for compensation under subsection (1), it must be presumed that the caveat was lodged or continued without reasonable cause unless the person who lodged or continued it proves that it was lodged or continued with reasonable cause.

**147        Notices to caveator**

- (1) A notice to a caveator under this Division is sufficiently served if left at or sent to the address mentioned in section 137(2)(b).
- (2) If the Registrar-General is satisfied that a notice under this Division will not reach the caveator if served in the way mentioned in subsection (1), the notice may be served in a way specified in a written direction by the Registrar-General.
- (3) If the Registrar-General is notified and is satisfied that the name or address of the caveator has changed, the Registrar-General must record in the land register details of the new name and address.
- (4) The name or address recorded under subsection (3) becomes the name or address for service of a notice on the caveator.



### **Division 3            Powers of attorney and disabilities**

#### **148            Registration of power of attorney**

- (1) The Registrar-General may, in accordance with the *Powers of Attorney Act*, register an instrument creating or revoking a power of attorney.
- (5) The Registrar-General may register an instrument executed under a registered power of attorney without being satisfied that the power of attorney has not been revoked.
- (6) The Registrar-General must not register an instrument executed under a registered power of attorney if the instrument became effective after:
  - (a) an instrument of revocation or disclaimer of the power of attorney is registered; or
  - (b) someone else is registered as owner of the relevant lot after the death or bankruptcy of the donor.

#### **150            Persons under disability**

The Supreme Court may authorise a person to act for a registered proprietor of a lot who appears to the court to be incapable of managing the person's own affairs because, for example, of age or mental or intellectual incapacity.

#### **151            Acts for minors and by attorneys etc.**

- (1) If:
  - (a) an act is required or permitted to be done by or in relation to a person under this Act; and
  - (b) the person is a minor or is mentally or intellectually impaired or incapable of managing his or her own affairs,

the act may be done by or in relation to a person who is responsible by law for the management and care of the first person's interests.

- (2) If an act is required or permitted to be done by or in relation to a person under this Act, the act may be done by or in relation to the person's attorney appointed under this Division.

## **Part 8            Instruments**

### **Division 1        General**

#### **152            When instrument capable of registration**

An instrument is able to be registered only if:

- (a) it complies with this Act;
- (b) it appears on its face to be capable of being registered; and
- (c) it is accompanied by any form of application that may be required by the Registrar-General under the Registrar-General's directions or required by this or another Act.

#### **153            Lodging certificate as to title**

- (1) Subject to this section, an instrument affecting a lot may only be registered if a certificate as to title for the lot is lodged.
- (2) Subsection (1) does not apply if there is not a current certificate as to title for the lot.
- (3) A certificate as to title need not be lodged if the lot is to receive the benefit of a covenant or the benefit of an easement.
- (4) A certificate as to title need not be lodged with any of the following:
  - (a) a request to register a writ of execution or any other court order;
  - (b) a transfer in pursuance of a writ of execution;
  - (c) a transfer in pursuance of a statutory charge;
  - (d) a transfer in pursuance of a court order;
  - (e) a caveat;
  - (f) a statutory charge;
  - (g) a statutory vesting under section 64;
  - (h) an instrument of a class of instruments that the Registrar-General's directions have dispensed with production of the certificate as to title;
  - (j) an instrument that the Registrar-General has dispensed with production of the certificate as to title.

**154        Correcting unregistered instruments**

- (1) The Registrar-General may correct an obvious error in a plan of survey that is lodged by:
  - (a) drawing a line through the error without making the original words illegible;
  - (b) including the correct information; and
  - (c) dating and initialling the correction.
- (2) The Registrar-General may correct an obvious error in an instrument that is lodged (other than a plan of survey) by noting the correction on the instrument.
- (3) The Registrar-General may correct an obvious error in an instrument that is lodged only if the Registrar-General is satisfied that the instrument is incorrect and the correction will not prejudice the rights of a person.
- (4) An instrument corrected by the Registrar-General under this section has the same effect as if the relevant error had not been made.

**155        Requisitions**

- (1) The Registrar-General may, by written notice given to a person who has lodged or deposited an instrument or other document, require the person:
  - (a) to re-execute, complete or correct the instrument or document if it appears to the Registrar-General to be wrong, incomplete or defective; or
  - (b) to produce to the Registrar-General specified information, or deposit a specified instrument or document, in support of the person's application to register the instrument.
- (2) The Registrar-General may require the instrument, document or information to be verified by statutory declaration or affidavit.
- (3) The notice may specify when, and the place where, it must be complied with.
- (4) The Registrar-General may extend the time for complying with the notice.

- (5) The Registrar-General may refuse to deal with the instrument or document lodged or deposited by the person (and any instrument that depends on it for registration) until the person complies with the notice.

**156            Rejecting instrument for failure to comply with requisition**

- (1) If a notice under section 155 is not complied with by a person within the time specified or extended by the Registrar-General, the Registrar-General may reject the instrument or document to which the notice relates and any instrument that depends on it for registration.
- (2) An instrument rejected under subsection (1) loses its priority under section 181 and must be returned by the Registrar-General to the person who lodged it.
- (3) A memorandum recording the rejection of an instrument under subsection (1) may be endorsed on the rejected instrument or in a separate record kept in the Land Titles Office.
- (4) This section does not prevent a rejected instrument being re-lodged after the notice has been complied with.

**157            Withdrawing lodged instrument before registration**

- (1) The Registrar-General may withdraw an instrument or permit an instrument to be withdrawn if satisfied that:
  - (a) the order in which the instrument has been lodged in relation to other instruments will not give effect to the intention expressed in it or a related instrument; or
  - (b) the instrument should not have been lodged.
- (2) An instrument that is withdrawn under subsection (1) remains in the Land Titles Office unless the instrument is an instrument that should not have been lodged.
- (3) The Registrar-General may re-lodge an instrument that has been withdrawn by the Registrar-General.
- (4) On receiving a written application, the Registrar-General may re-lodge an instrument that the Registrar-General has permitted to be withdrawn.
- (5) An instrument withdrawn under subsection (1) loses its priority and is taken to have been lodged on the date and at the time endorsed on it by the Registrar-General at the time it is re-lodged.

**158 Registrar-General may call in instrument for correction or cancellation**

The Registrar-General may require a person to deposit an instrument for correction or cancellation.

**159 Execution and proof**

- (1) For a corporation, an instrument is validly executed if:
  - (a) it is executed in a way permitted by law; or
  - (b) the instrument is sealed with the corporation's seal in accordance with section 48 of the *Law of Property Act*.
- (2) For a natural person, an instrument is validly executed if:
  - (a) it is executed in a way permitted by law; and
  - (b) the execution is witnessed by a person mentioned in Schedule 1.
- (3) However, the Registrar-General may, in exceptional circumstances, register an instrument executed by a natural person even though the execution was not witnessed or was not witnessed by a person mentioned in Schedule 1.
- (4) The witnessing of an instrument may be proved in any way permitted by law.

**160 Obligations of witness for natural person**

A person who witnesses an instrument executed by a natural person must:

- (a) first take reasonable steps to ensure that the person is the person entitled to sign the instrument;
- (b) have the person execute the document in the presence of the person; and
- (c) not be a party to the instrument.

**161 Substitute instrument**

- (1) If the Registrar-General is satisfied that a registered instrument has been lost or destroyed, the Registrar-General may issue a substitute instrument.

- (2) The Registrar-General may endorse on the substitute instrument:
  - (a) that the instrument is a substitute replacing a lost or destroyed instrument;
  - (b) the date that the substitute instrument was issued;
  - (c) that the substitute instrument is to be used in place of the original instrument;
  - (d) the location of the original instrument so far as it is known; and
  - (e) other known circumstances of the loss or destruction.
- (3) On issuing the substitute instrument:
  - (a) the substitute instrument becomes the registered instrument instead of the original instrument; and
  - (b) the substitute instrument has the priority to which the original instrument was entitled.
- (4) The Registrar-General must record in the land register that the substitute instrument has been issued and the date it was issued.

**162        Dispensing with production of instrument**

- (1) The Registrar-General may dispense with the production of an instrument.
- (2) The Registrar-General may require evidence that a person seeking to deal with a relevant lot is the registered proprietor and that the instrument:
  - (a) has been lost or no longer exists; and
  - (b) is not deposited as security or for safe custody.
- (3) The Registrar-General must record in the land register that production of the instrument has been dispensed with and the date production of it was dispensed with.

**163        Requiring plan of survey to be lodged**

- (1) Subject to section 66, the Registrar-General may require a registered proprietor of a lot who proposes to transfer, lease or otherwise deal with all or part of the lot to lodge a plan, map or diagram if the Registrar considers that the plan, map or diagram is necessary or desirable for the purpose of registering or recording the dealing.

- (2) The plan, map or diagram lodged under subsection (1) must comply with the Registrar-General's directions as to its dimensions, the scale to which it is drawn and the information that it includes.
- (3) The Registrar-General may reject a plan, map or diagram that does not comply with the Registrar-General's directions or is inaccurate or deficient in any respect.

**164        Pre-examination of plans**

- (1) Nothing in this Act prevents the Registrar-General from examining a plan of survey and related instruments deposited before the plan:
  - (a) is approved under the *Licensed Surveyors Act*;
  - (b) is approved under the *Planning Act*; or
  - (c) lodged for registration.
- (2) Section 155 applies to a plan and related instruments deposited under subsection (1).
- (3) Nothing in this Act prevents the Registrar-General from examining a plan (of any kind) prepared for the purposes of any subdivision referred to in the *Unit Titles Act* at any time before the lodgment of the plan for the purposes of any approval or registration.

**165        Disposing of instrument in certain circumstances**

- (1) The Registrar-General may, in accordance with a scheme to be prepared by him or her in consultation with the Northern Territory Archives Service, dispose of a document registered or deposited at the Land Titles Office that appears to the Registrar-General to be unnecessary for the purpose of establishing or evidencing any interest or right in or over land.
- (2) The scheme may provide for disposing of documents by their destruction, their sale, their delivery to a former registered proprietor, or their delivery to any person or body for preservation as being of historic interest.
- (3) Before destroying a document under this section, the Registrar must copy it in whatever way the Registrar-General considers appropriate unless exempted from doing so by regulations.
- (4) A document may be disposed of under this section only in accordance with the restrictions or limitations (if any) that may be prescribed by regulations.

**166            Transferor must do everything necessary etc.**

A person who for valuable consideration executes an instrument to transfer or create an interest in a lot must do everything necessary to give effect to the terms and other matters stated in the instrument or implied by this or another Act.

**Division 2            Standard terms documents forming parts of instruments**

**167            Meaning of *standard terms document***

In this Division, ***standard terms document*** means a document containing provisions that are treated as terms of an instrument to which the document is to apply or applies.

**168            Standard terms document to which instrument refers may be registered**

- (1) The Registrar-General or another person may lodge a standard terms document and may amend the document by lodging a further standard terms document.
- (2) The lodged standard terms document must be given a distinguishing reference and must be registered.

**169            Standard terms document that is part of instrument**

All or part of a registered standard terms document, or an amended registered standard terms document, forms part of an instrument if the instrument:

- (a) says it forms part of the instrument; and
- (b) belongs to a class identified in the standard terms document as an instrument to which the standard terms document applies.

**170            Instrument not limited to that contained in standard terms document**

- (1) In addition to the provisions in a registered standard terms document, an instrument may include a provision incorporating other terms into the instrument.
- (2) If there is a conflict between the standard terms document and the terms in an instrument, the instrument prevails.



**171 Withdrawal or cancellation of standard terms document**

- (1) The Registrar-General may withdraw a registered standard terms document if asked to withdraw it by the person who lodged it.
- (2) The Registrar-General may cancel a registered standard terms document lodged by the Registrar-General after giving one month's notice in the *Gazette*.
- (3) The Registrar-General must keep and, if asked, produce for inspection a copy of a standard terms document cancelled or withdrawn under this section.
- (4) The withdrawing or cancelling of a standard terms document does not affect an instrument already registered or executed within 7 days after the document was withdrawn or cancelled.

**172 Standard terms document to be provided to other parties**

- (1) If a standard terms document forms part of an instrument, the party by or on behalf of whom the standard terms document was applied to the instrument must provide the other party or parties with a copy of the standard terms document before the instrument is executed.

Penalty: 20 penalty units.

- (2) Failure to comply with subsection (1) does not affect the validity or effect of the instrument.

**Part 9 Registration of instruments and its effects**

**Division 1 Registration of instruments**

**173 Registrar-General must register instruments**

- (1) If a person lodges an instrument and complies with the requirements of this Act for its registration, the Registrar-General must register the instrument.
- (2) Subsection (1) does not prevent the person from withdrawing the instrument.

**174 Registrar-General must give distinguishing reference to each instrument**

On registering an instrument affecting a lot, the Registrar-General must:

- (a) give the instrument a distinguishing reference; and

- (b) record the reference in the particulars in the land register about the lot.

**175 How instrument is registered**

The Registrar-General registers an instrument in the land register by recording in the land register the particulars necessary to identify the instrument.

**176 Registration statement**

On registering an instrument, the Registrar-General must issue to the person who lodged the instrument a statement certifying that the instrument has been registered.

**177 When instrument is registered**

An instrument is registered when the Registrar-General records particulars of the registration in the land register.

**178 Time from when instrument forms part of land register etc.**

A registered instrument forms part of the land register from when it is lodged.

**179 Registered instrument operates as deed**

A registered instrument operates as a deed.

**180 Order of registration of instruments**

- (1) Instruments affecting a lot, including instruments affecting or creating an interest in the lot, must be registered in the order in which they are lodged.
- (2) Subsection (1) is subject to section 157.
- (3) Despite subsection (1), if an instrument (*instrument 2*) affecting a lot is lodged after another instrument (*instrument 1*) affecting the lot, instrument 2 may be registered before instrument 1 if the registration of instrument 2 cannot affect any interest that a person might claim under instrument 1.

**181 Priority of registered instruments**

- (1) Registered instruments have priority according to when each of them was lodged and not according to when each of them was executed.

- (2) An instrument is taken to be lodged on the date and at the time endorsed on the instrument by the Registrar-General as the date and time when the document was lodged unless the contrary is proved.
- (3) Subsection (1) is not affected by actual, implied or constructive notice.

**182 Evidentiary effect of recording particulars in land register**

In all proceedings, the particulars of a registered instrument recorded in the land register are conclusive evidence of:

- (a) the registration of the instrument;
- (b) the contents of the instrument;
- (c) all terms stated or implied in it by this or another Act; and
- (d) when the instrument was lodged and registered.

**Division 2 Consequences of registration**

**Subdivision 1 General**

**183 Benefits of registration**

The benefits of this Division apply to an instrument whether or not valuable consideration has been given.

**184 Interest in lot not transferred or created until registration**

An instrument does not transfer or create an interest in a lot at law until it is registered.

**185 Effect of registration on interest**

On an instrument being registered that is expressed to transfer or create an interest in a lot, the interest:

- (a) is transferred or created in accordance with the instrument;
- (b) is registered; and
- (c) vests in the person identified in the instrument as the person entitled to the interest.

**186 Right to have interest registered**

A person to whom an interest is to be transferred or in whom an interest has been created has a right to have the instrument transferring or creating the interest registered if:

- (a) the instrument has been executed;
- (b) the person lodges the instrument and any documents required by the Registrar-General to effect registration of the instrument; and
- (c) the person has otherwise complied with this Act in relation to the registration of the instrument.

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

If a person dies after signing an instrument affecting a lot and before the instrument is registered, the instrument may be registered and is valid despite the person's death.

**Subdivision 2 Indefeasibility**

**188 Quality of registered interests**

- (1) A registered proprietor of an interest in a lot holds the interest subject to registered interests affecting the lot but free from all other interests.
- (2) In particular, the registered proprietor:
  - (a) is not affected by actual or constructive notice of an unregistered interest affecting the lot;
  - (b) is not affected by 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, that but for this Act might be held paramount or to have priority; and despite want of notice or insufficient notice of any application, or any error, omission, or informality in any application or proceedings; and
  - (c) is liable to a proceeding for possession of the lot or an interest in the lot only if the proceeding is brought by the registered proprietor of an interest affecting the lot.
- (3) However, subsections (1) and (2) do not apply:
  - (a) to an interest mentioned in section 189; or

- (b) if there has been fraud by the registered proprietor, whether or not there has been fraud by a person from or through whom the registered proprietor has derived the registered interest.
- (4) Nothing in this section is to be construed as affecting any of the following rights or powers:
  - (a) the power of an officer of a court to sell the land of a judgment debtor under a writ of execution;
  - (b) the power of a court to order the sale of land;
  - (c) the right of an official receiver or trustee, within the meaning of the *Bankruptcy Act 1966* of the Commonwealth, to land transmitted on the insolvency of the registered proprietor.
- (5) An instrument is unregistered despite it being registered under another Act.
- (6) Subsection (1) does not affect the operation and effect of section 34.

#### **189 Exceptions to section 188**

- (1) A registered proprietor of a lot does not obtain the benefit of section 188 for the following interests in relation to the lot:
  - (a) an equity arising from the act of the registered proprietor;
  - (b) the interest of a lessee in actual possession under a short lease;
  - (c) the interest of a person entitled to the benefit of an easement if its particulars have been omitted from or misdescribed in the land register;
  - (d) the interest of another registered proprietor making a valid claim under an earlier existing indefeasible title for all or part of the lot;
  - (e) the interest of another registered owner if there are 2 indefeasible titles for the same interest in the lot and the inconsistency has arisen through failure on transfer to cancel, wholly or partly, the indefeasible title of the first registered owner;
  - (f) the interest of another registered proprietor if the lot described in the indefeasible title wrongly includes land in which the other registered proprietor has an interest.

- (2) The interest of the lessee under subsection (1)(b) does not include:
  - (a) a right to acquire the fee simple or other reversionary interest on or after ending of the short lease; or
  - (b) a right to renew or extend the term of the short lease beyond 3 years from the beginning of the original term.
- (3) For the purposes of subsection (1)(c), an easement is taken to have been omitted if:
  - (a) the easement was in existence when the lot burdened by it was first registered but particulars are no longer recorded in the land register against the lot burdened; or
  - (b) the easement was registered but later omitted by an error of the Registrar-General.

**190 Action to correct wrong inclusion of lot**

- (1) If the Registrar-General is satisfied that section 189(1)(f) applies to an indefeasible title, the Registrar-General may correct the indefeasible title.
- (2) A person affected by the correction may apply to the Supreme Court for an order that the correction be amended or set aside.
- (3) The application must be made within one month after the person receives the written notice of the correction.

**191 Orders by Supreme Court about fraud and competing interests**

- (1) If there has been fraud by the registered proprietor or section 189(1)(c) to (f) applies, the Supreme Court may make the order it considers just.
- (2) Without limiting subsection (1), the Supreme Court may, by order, direct the Registrar-General:
  - (a) to cancel or correct the indefeasible title or other particulars in the land register;
  - (b) to cancel, correct, execute or register an instrument;
  - (c) to create a new indefeasible title;
  - (d) to issue a new instrument; or
  - (e) to do anything else.

### **Subdivision 3 Compensation for loss of title**

#### **192 Compensation for deprivation of lot or interest in lot**

- (1) This section applies if a person is deprived of a lot or an interest in a lot because of:
  - (a) the fraud of another person;
  - (b) the incorrect creation of an indefeasible title in the name of another person;
  - (c) incorrect registration;
  - (d) an error in an indefeasible title or in the land register;
  - (e) tampering with the land register;
  - (f) loss, destruction or improper use of a document deposited or lodged at the Land Titles Office or held by the Land Titles Office for safe custody;
  - (g) an omission, mistake, breach of duty, negligence or misfeasance of or by the Registrar-General or a member of the staff in the Land Titles Office; or
  - (h) the exercise by the Registrar-General of a power in relation to an application or dealing with which the person had no connection.
- (2) The person is entitled to compensation from the Territory for the deprivation.

#### **193 Compensation for loss or damage**

- (1) This section applies if a person suffers loss or damage because of:
  - (a) the incorrect creation of an indefeasible title in the name of another person;
  - (b) incorrect registration;
  - (c) an error in an indefeasible title or in the land register;
  - (d) reliance on the incorrect state of the land register;
  - (e) loss, destruction or improper use of a document deposited or lodged at the Land Titles Office or held by the Land Titles Office for safe custody;

- (f) omission, mistake, breach of duty, negligence or misfeasance of or by the Registrar-General or a member of the staff of the Land Titles Office; or
  - (g) the exercise by the Registrar-General of a power in relation to an application or dealing of which the person had no connection.
- (2) The person is entitled to compensation from the Territory for the loss or damage.
  - (3) Despite anything in subsection (1) or (2), the person is not entitled to compensation under this section for loss or damage caused by the incorrectness of a register kept by the Registrar-General if the Registrar-General may correct the register under section 17.
  - (4) Subsection (3) does not limit the person's rights to compensation otherwise than under subsections (1) and (2).

**194 Order by Supreme Court about deprivation, loss or damage**

- (1) For section 192 or 193, a person may apply to the Supreme Court for an order:
  - (a) about the amount of compensation to be paid by the Territory; or
  - (b) directing the Registrar-General to take stated action.
- (2) The Supreme Court may make the order it considers just.
- (3) Without limiting subsection (2), the Supreme Court may, by order, direct the Registrar-General to:
  - (a) cancel or correct an indefeasible title or other particulars in the land register;
  - (b) create a new indefeasible title;
  - (c) issue a new instrument; or
  - (d) do anything else.



## 195 Matters for which there is no entitlement to compensation

- (1) A person is not entitled to compensation from the Territory for deprivation, loss or damage:
  - (a) because of a breach of a trust or fiduciary duty (whether express, implied or constructive) including a breach of duty arising in the administration of the estate of a deceased person;
  - (b) if the person, a person acting as agent for the person, or an indemnified person acting or purporting to act for the person, caused or substantially contributed to the deprivation, loss or damage by fraud, neglect or wilful default, including, for example, failure to take reasonable steps in response to a notice that the Registrar-General intended to create a new indefeasible title for the relevant lot;
  - (c) suffered by a corporation through the improper use of its seal or by an act of an authorised signatory of the corporation who exceeds the signatory's authority;
  - (d) caused when the Registrar-General corrected an indefeasible title that mistakenly included the person's land, unless the person suffered loss or damage under section 193(1)(d);
  - (e) if the loss, damage or deprivation arises out of a matter about which the Registrar-General is by an Act or law, either expressly or by necessary implication, excused from inquiring; or
  - (f) because of the Registrar-General lodging a caveat under section 18.
- (2) In this section, **indemnified person** means a legal practitioner, conveyancing agent or real estate agent covered by indemnity insurance (however described) under the *Legal Practitioners Act* or *Agents Licensing Act*.

## 196 Territory's right of subrogation

- (1) On paying compensation to a person under section 192 or 193, the Territory is subrogated to the rights of the person against the person responsible for the deprivation, loss or damage under the section.
- (2) Without limiting subsection (1), the Territory has rights of subrogation against persons (including legal practitioners, conveyancing agents and surveyors) who in the course of their professional duties have prepared documents for registration that

have, in whole or in part, led to the loss or damage.

- (3) If in exercising its rights under subsection (1) the Territory receives an amount that is more than the amount it paid to the person, the Territory must pay the difference to the person after deducting the Territory's costs.

## **Part 10            Liens**

### **197            Vendor does not have equitable lien**

A vendor of a lot does not have an equitable lien on the lot because of the purchaser's failure to pay all or part of the purchase price of the lot.

## **Part 11            Miscellaneous**

### **198            No title by adverse possession**

- (1) A person does not acquire any right or title to land under this Act by any length of adverse possession.
- (2) The right of a registered owner of land to recover possession of the land is not barred by any length of adverse possession.

### **199            Lis pendens cannot be registered**

A lis pendens affecting land under this Act cannot be registered.

### **200            Words and expressions used in instruments under Act**

- (1) Words and expressions used in instruments made or executed under this Act and also in this Act have the same respective meanings in the instruments as they have in this Act.
- (2) The application of subsection (1) to an instrument may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

### **201            Protection from liability**

- (1) The Registrar-General, or any person acting under the authority of the Registrar-General, is not liable to any action, suit, or proceeding in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of a power under this Act.
- (2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the Territory.

- (3) In subsection (1), a reference to an act or matter includes publishing reasons for a decision following an inquiry under section 26.

**202 Registrar-General may approve forms**

The Registrar-General may approve forms for use under this Act.

**203 Reference to instrument is reference to instrument completed in appropriate form**

In this Act, a reference to a particular type of instrument is a reference to the instrument completed in the appropriate form.

**204 References in instruments to person with interest in lot includes personal representatives etc.**

- (1) In this Act or an instrument made or executed under this Act, a reference to a person as owner, proprietor, transferor, transferee, mortgagor, mortgagee, lessor, lessee or as having an interest in a lot includes a reference to the person's personal representatives, successors and assigns.
- (2) Subsection (1) may be displaced, wholly or partly, by a contrary intention.

**205 Registrar-General may provide particulars of dealings in land**

- (1) In this section, **authority** means:
- (a) a local government body;
  - (b) the Power and Water Authority, within the meaning of the *Power and Water Authority Act*;
  - (c) the Valuer-General; or
  - (d) a person approved in writing by the Minister.
- (2) The Registrar-General may, subject to the direction of the Minister, enter into an agreement with a authority to provide to the authority the information, or part of the information, that a person who disposes of or acquires an estate or interest in land is required by or under an Act to provide to the authority in respect of the land.
- (3) The agreement may:
- (a) relate to the provision of all or part only of the information required to be provided by a person who disposes of or acquires an estate or interest in land; and

- (b) specify that the information be provided in a particular form, including in an electronic form.
- (4) While the agreement remains in force, the Registrar-General must provide the information to the authority in accordance with the agreement.

## **206 Service**

- (1) If this Act requires a notice to be served on or given to a person, the requirement is satisfied if the notice is:
  - (a) served personally;
  - (b) sent by registered or certified post or by facsimile or telex:
    - (i) to the address for service noted in the land register;
    - (ii) in the case of a corporation – either to that address or to the address of the corporation's registered office or principal place of business for the purposes of the Corporations Act 2001; or
    - (iii) if the address or addresses authorised by subparagraphs (i) and (ii) appear to the Registrar-General to be unsatisfactory – to any other address that he or she may consider appropriate;
  - (c) served in a manner specified in the Registrar-General's directions; or
  - (d) published in a manner specified in the Registrar-General's directions.
- (2) The address for service noted in the land register may be a post office box and may, in the case of a natural person, be a business address.
- (3) The Supreme Court may order that a notice required or permitted to be served on a person under this Act be served in the way directed by the Supreme Court.
- (4) The Supreme Court may make an order under subsection (3) if, for example, the person:
  - (a) is not known;
  - (b) cannot be found and has no known agent; or
  - (c) is dead and has no personal representative.

- (5) The Supreme Court may dispense with service of a notice required or permitted to be served on a person under this Act if it is satisfied that it is appropriate to dispense with service of the notice.

**207 Delivery**

If the Registrar-General is required or permitted to return an instrument or other document to a person who has deposited or lodged it in the Land Titles Office, the Registrar-General may return it by leaving it at a place designated for the purpose at the Land Titles Office.

**208 Powers of Registrar-General arising from reciprocal arrangements**

Nothing in this Act prevents the Registrar-General giving to a relevant registrar information relating to a matter arising wholly or partly under the law of another Commonwealth jurisdiction.

**209 Reciprocal arrangements for lodgement of documents**

- (1) If the Minister is satisfied that the law in force in another Commonwealth jurisdiction providing for the registration of interests in land makes substantially the same provision as this Act, the Registrar-General may make an agreement with a relevant registrar in the jurisdiction under which:
- (a) the relevant registrar may, in respect of land in Territory, perform any functions and exercise any powers that may be performed or exercised by the Registrar-General under this Act; and
  - (b) the Registrar-General may, in respect of land outside the Territory, perform any functions or exercise any powers that may be performed or exercised by the relevant registrar under the law of the jurisdiction.
- (2) The agreement may provide:
- (a) that the Registrar-General may accept a document lodged for registration in the other jurisdiction or any information on behalf of the relevant registrar;
  - (b) that the Registrar-General may send to any relevant registrar any documents or information received on behalf of that registrar by:
    - (i) transmission of the original documents;
    - (ii) transmission of copies of the documents;

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- (iii) facsimile process;
  - (iv) any device used for the storage or transmission or processing of information as may be approved by the Registrar-General;
  - (v) a process authorised by the law of that other jurisdiction; or
  - (vi) by a combination of any of those means; and
- (c) that the Registrar-General may accept from the relevant registrar any documents or information transmitted as provided by paragraph (b).
- (3) Where a document of information is transmitted to the Registrar-General as provided by this section, the document or information is taken to have the same effect as the original document of information of which it purports to be a copy.

## **210 Registrar-General's directions**

- (1) The Registrar-General may issue directions, not inconsistent with this Act, relating to the requirements to be followed in lodging, registering, serving or publishing documents and plans under this Act.
- (2) In issuing the Registrar-General's directions, the Registrar-General must have regard to:
- (a) the object of this Act; and
  - (b) the principle that the registered interest of a person in land is not to be adversely affected, other than with the consent of the person.
- (3) Without limiting subsection (1), the Registrar-General's directions may provide for:
- (a) the form and content of and the requirements in respect of documents and plans;
  - (b) the number of copies of documents and plans to be lodged;
  - (c) the need for lodging consents, certificates and other documents;
  - (d) the signing of documents (including in electronic form and by codes);

- (e) the practice of carrying forward registered interests onto new titles; and
  - (f) the time and method of paying fees.
- (4) The Registrar-General's directions must be complied with unless the Registrar-General dispenses with compliance.
  - (5) Directions take effect on the date the Registrar-General gives notice in the *Gazette* that the directions have been issued.
  - (6) The notice must include advice that the directions are available for inspection by members of the public at the Land Titles Office, without charge, during normal office hours.
  - (7) The Registrar-General must comply with any direction from the Minister concerning an amendment to the Registrar-General's directions.

## **211 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the Regulations may prescribe:
  - (a) the form or medium, or the combinations of them, for, and the manner of:
    - (i) keeping the land register; or
    - (ii) making entries in the land register; and
  - (b) the forms to be used.

## **212 Repeal**

- (1) The Acts of South Australia listed in Part A of Schedule 2 as applying as laws of the Territory are repealed.
- (2) The Ordinances and Acts listed in Part B of Schedule 2 are repealed.

## **Part 12            Savings and transitional**

### **213            Definition**

In this Part, a reference to the *Real Property Act* means the *Real Property Act* as in force before the commencement of this Act.

### **214            Things made under *Real Property Act***

- (1) In this section, **done** includes issued, recorded, entered, kept, granted, declared, registered, lodged, deposited, produced, transferred, created, served, given, acquired, required, executed, removed, noted, sealed, imprinted, witnessed, advertised and anything else prescribed for the purposes of this definition.
- (2) Everything done under the *Real Property Act* is as effective as if it had been done under this Act.

### **215            Interests and certificates as to title under *Real Property Act***

- (1) On the commencement of this section:
  - (a) each interest in land held by a person immediately before the commencement, and recorded under the *Real Property Act*, is taken to be an interest held by the person in the land register; and
  - (b) each certificate as to title, duplicate certificate as to title or deed of grant issued under the *Real Property Act* before the commencement is taken to be a certificate as to title issued under this Act.
- (2) The Registrar-General must do everything necessary or desirable to ensure that the particulars of each interest mentioned in subsection (1) are fully and accurately recorded in the land register.

### **216            Encumbrances**

- (1) An encumbrance registered under the *Real Property Act* is to be taken to be a mortgage executed under this Act.
- (2) A restrictive covenant contained in an encumbrance under the *Real Property Act* is to be taken to be a covenant executed under this Act.
- (3) A covenant that was unenforceable under the *Real Property Act* continues to be unenforceable after the commencement of this Act.



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**217 Registration of instrument lodged before commencement of Act**

- (1) If:
- (a) an instrument is lodged before the commencement of this Act, but is not registered before the commencement; and
  - (b) the Registrar-General had power to register the instrument when it was lodged;

the Registrar-General may register the instrument after the commencement of this Act.

- (2) If within 12 months before the commencement of this Act an instrument was executed in accordance with the law as then in force, the Registrar-General must register the instrument if it is lodged after that commencement.
- (3) When registering an instrument under this section, the Registrar-General must exercise the powers that the Registrar-General had at the time when the instrument was lodged.

**218 Certain provisions of *Real Property Act* to continue to operate**

- (1) The repeal of the *Real Property Act* does not affect the operation of section 86 of that Act.
- (2) Subject to the *Law of Property Act*, the repeal of the *Real Property Act* does not affect the operation of section 113(3) of that Act.
- (3) The repeal of the *Real Property Act* does not affect the operation of sections 132 to 139 (inclusive) of that Act or the regulations made under that Act (in so far as they are relevant) in respect of a default under a mortgage that occurred before the commencement of this Act whether or not the default continues after that commencement.
- (4) The repeal of the *Real Property Act* does not affect the operation of section 165 of that Act.
- (5) The repeal of the *Real Property Act* does not affect the operation of sections 124 and 125 of that Act to a lease to which those sections applied before the commencement of this Act and those sections continue to apply to the lease as if they had not been repealed.
- (6) The repeal of the *Real Property Act* does not affect the operation of section 130 of that Act to a mortgage or encumbrance to which the section applied before the commencement of this Act and the section continues to apply to the mortgage or encumbrance as if it had not been repealed.

- (7) The repeal of the *Real Property Act* does not affect the operation that a caveat lodged under that Act would have had but for that repeal and, in respect of the caveat, section 191 continues to apply as if it had not been repealed.
- (8) The repeal of the *Real Property Act* does not affect the operation of section 265 of that Act to a mortgage, encumbrance or lease to which the section applied before the commencement of this Act and the section and Schedule 16 (as referred to in the section) continue to apply to the mortgage, encumbrance or lease as if they had not been repealed.
- (9) A memorandum prepared and retained under section 265A of the *Real Property Act* is to be taken to be a registered standard terms document for the purposes of Division 2 of Part 8.
- (10) An agreement entered into under section 274 of the *Real Property Act* that is in force immediately before the commencement of this Act continues in force after the commencement as if it were an agreement entered into under section 205.

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**Schedule 1 Witnesses to instruments**

section 159

PLACE OF EXECUTION OF INSTRUMENT	PERSONS WHO CAN WITNESS EXECUTION
In the Northern Territory	<ul style="list-style-type: none"> <li>· a Commissioner for Oaths</li> <li>· a member of the Legislative Assembly</li> <li>· a legal practitioner within the meaning of the <i>Legal Practitioners Act</i></li> <li>· a person holding office under the <i>Supreme Court Act</i>, the <i>Justices Act</i>, the <i>Local Court Act</i> or the <i>Registration Act</i></li> <li>· a member of the Police Force</li> <li>· a person licensed as a conveyancing agent or real estate agent under the <i>Agents Licensing Act</i></li> <li>· a Notary Public</li> <li>· any other person approved by the Registrar-General</li> </ul>
In a State, Territory or place within Australia	<ul style="list-style-type: none"> <li>· Any person approved by Registrar-General's directions</li> </ul>
In a place outside Australia	<ul style="list-style-type: none"> <li>· Any person approved by Registrar-General's directions</li> </ul>

## Schedule 2

section 212

### PART A

The Real Property Act, 1886 (1886, No. 380)

The Real Property Amendment Act, 1893 (1893, No. 569)

### PART B

*Real Property Ordinance 1918* (No. 13 of 1918)

*Real Property Ordinance 1926* (No. 12 of 1926)

*Real Property Ordinance 1932* (No. 11 of 1932)

*Real Property Ordinance 1965* (No. 15 of 1965)

*Real Property Ordinance 1969* (No. 2 of 1969)

*Real Property Ordinance 1973* (No. 63 of 1973)

*Real Property Act 1978* (No. 93 of 1978)

*Real Property Amendment Act 1981* (No. 48 of 1981)

*Real Property Amendment Act 1982* (No. 67 of 1982)

*Real Property Amendment Act (No. 2) 1982* (No. 83 of 1982)

*Real Property Amendment Act 1983* (No. 8 of 1983)

*Real Property Amendment Act 1984* (No. 17 of 1984)

*Real Property Amendment Act 1986* (No. 27 of 1986)

*Real Property Amendment Act 1988* (No. 38 of 1988)

*Real Property Amendment Act 1989* (No. 59 of 1989)

*Real Property Amendment Act (No. 2) 1989* (No. 66 of 1989)

*Real Property Amendment Act 1991* (No. 32 of 1991)

*Real Property Amendment Act (No. 2) 1991* (No. 53 of 1991)

*Real Property Amendment Act 1993* (No. 19 of 1993)

*Real Property Amendment Act (No. 2) 1993* (No. 76 of 1993)

*Real Property Amendment Act 1999* (No. 17 of 1999)

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Land Title Act 2000 (Act No. 2, 2000)***

Assent date	14 March 2000
Commenced	1 December 2000 ( <i>Gaz G38, 27 September 2000, p 2</i> )

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 1, 2000) and <i>Gaz G38, 27 September 2000, p 2</i> )

***Statute Law Revision Act 2001 (Act No. 3, 2001)***

Assent date	22 March 2001
Commenced	22 March 2001

***Unit Titles (Consequential Amendments – Building Development) Act 2001 (Act No. 15, 2001)***

Assent date	28 June 2001
Commenced	1 March 2002 (s 2, s 2 <i>Unit Titles Amendment Act 2001</i> (Act No. 14, 2001) and <i>Gaz G8, 27 February 2002, p 6</i> )

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz S285, 13 July 2001</i> )

***Statute Law Revision Act 2004 (Act No. 18, 2004)***

Assent date	15 March 2004
Commenced	5 May 2004 (s 2(1), s 2 <i>Associations Act 2003</i> (Act No. 56, 2003) and <i>Gaz G18, 5 May 2004, p 2</i> )

***Justice Portfolio (Miscellaneous Amendments) Act 2005 (Act No. 20, 2005)***

Assent date	6 May 2005
Commenced	13 July 2005 ( <i>Gaz G28, 13 July 2005, p 3</i> )

**3**

**LIST OF AMENDMENTS**

s 3	amd No. 45, 2000, s 5
s 4	amd No. 15, 2001, s 5
s 9	amd No. 45, 2000, s 5
s 17	amd No. 45, 2000, s 5
s 35	amd No. 18, 2004, s 3
s 45	amd No. 45, 2000, s 5
s 48	amd No. 45, 2000, s 5
ss 52 – 53	amd No. 45, 2000, s 5
s 64	amd No. 45, 2000, s 5
s 66	amd No. 45, 2000, s 5
ss 87 – 90	amd No. 45, 2000, s 5
s 98	amd No. 3, 2001, s 8
s 112	amd No. 45, 2000, s 5; No. 3, 2001, s 8
s 142	amd No. 45, 2000, s 4
s 148	amd No. 45, 2000, s 5
s 149	rep No. 45, 2000, s 5
s 164	amd No. 15, 2001, s 5
s 165	amd No. 45, 2000, s 5
s 206	amd No. 17, 2001, s 21
s 210	amd No. 20, 2005, s 41
sch 2	amd No. 45, 2000, s 5