

Queensland



LAND TITLE ACT 1994

Act No. 11 of 1994

Queensland



LAND TITLE ACT 1994

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AMENDMENT OF ACTS

Queensland



Land Title Act 1994

Act No. 11 of 1994

An Act to consolidate and reform the law about the registration of freehold land and interests in freehold land, and for other purposes

[Assented to 7 March 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Land Title Act 1994*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Object of Act

3. The object of this Act is to consolidate and reform the law about the registration of freehold land and interests in freehold land and, in particular—

- (a) to define the rights of persons with an interest in registered freehold land; and
- (b) to continue and improve the system for registering title to and transferring interests in freehold land; and
- (c) to define the functions and powers of the Registrar of Titles; and
- (d) to assist the keeping of the registers in the land registry, particularly by authorising the use of information technology.

Definitions

4. In this Act—

“**action to recover**” a lot includes an action to redeem a mortgage of the lot;

“**adverse possessor**” of a lot means a person—

- (a) against whom the time for bringing an action to recover the lot has expired under the *Limitation of Actions Act 1974*; and

- (b) who, apart from this Act, is entitled to remain in possession of the lot;

“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 approved by the chief executive under section 179 (Chief executive may approve forms);

“bankruptcy” includes a proceeding under a law about bankruptcy, insolvency or the liquidation of corporations;

“caveatee”, for 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”, for a lot over which a caveat has been lodged, means a person in whose favour the caveat is lodged;

“certificate of title” means a certificate issued by the Registrar under section 42 (Issuing of certificates of title);

“correct” includes correct by addition, omission or substitution;

“deed of grant” means an instrument evidencing the grant of land by the State;

“deposit” means file in the land registry other than for registration;

“error” includes an error by omission;

“fee” includes tax;

“freehold land register” means the freehold land register kept under this Act;

“indefeasible title” of a registered lot has the meaning given by section 37 (Creation of indefeasible title);

“instrument” includes—

- (a) a deed of grant or certificate of title; and
(b) a will, grant of representation, or exemplification of a will, that

may be used to deal with a lot; and

- (c) a deed that relates to or may be used to deal with a lot; and
- (d) a power of attorney that may be used to deal with a lot; and
- (e) a request, application or other document that deals with a lot and may be registered under this Act; and
- (f) a map or plan of survey that may be lodged;

“land registry” means the land registry kept under this Act;

“lodge” means file in the land registry for registration;

“lot” means a separate, distinct parcel of land created on—

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

and includes a lot within the meaning of the *Building Units and Group Titles Act 1980*;

“mortgage” includes a charge on a lot for securing money or money’s worth, but does not include a charge on personal property or a charge on a lot and personal property;

“plan of survey” includes—

- (a) a plan of subdivision of a lot; and
- (b) an easement plan; and
- (c) a resurvey conducted to define the boundaries of a lot; and
- (d) a plan of amalgamation; and
- (e) a plan of survey that the Registrar requires the registered proprietor of a lot to lodge;

“proprietor” of a lot means a person entitled to an interest in a lot, whether or not the person is in possession;

Example—

A lessee or mortgagee of a lot is a proprietor of the lot.

“public utility provider” has the meaning given by section 89 (Easements for public utility providers);

“register” a lot, interest, instrument or other thing means record the

particulars of the thing in the freehold land register;

“registered owner” of a lot means the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot;

“registered proprietor” of a lot means a person recorded in the freehold land register as a proprietor of the lot;

“Registrar” means the Registrar of Titles;

“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 of lease that shows the leased area and is not a plan of survey;

“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;

“time share scheme” means a scheme under which participants are to have exclusive possession of a lot or part of a lot for discontinuous periods;

“writ of execution” means a writ of execution after judgment in any court.

Act binds all persons

5. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

PART 2—ADMINISTRATION

Division 1—General

Registrar of Titles

6.(1) There is to continue to be a Registrar of Titles.

(2) The Registrar has a seal of office.

(3) The Registrar is appointed and holds office under the *Public Service Management and Employment Act 1988*.

(4) Judicial notice must be taken of the signature, or the imprint of the seal, of the Registrar appearing on a document and the document must be presumed to have been properly signed or sealed until the contrary is proved.

(5) In acting under this Act or another Act, the Registrar is subject to the chief executive, but is not subject to any other officer or employee of the department.

Land registry

7.(1) The chief executive must keep a land registry.

(2) The land registry includes—

- (a)** the freehold land register; and
- (b)** registers about land required or permitted by an Act to be kept by the Registrar; and
- (c)** registers about land prescribed by regulation; and
- (d)** other registers about land required or permitted by an Act to be included in the land registry.

(3) A regulation may prescribe—

- (a)** the locations of offices of the land registry where documents may be lodged; and
- (b)** the particular documents that may, or may not, be lodged at a

particular office of the land registry for registration or recording in the appropriate register.

Form of registers

8.(1) A register in the land registry may be kept in the form (whether or not in a documentary form) the Registrar considers appropriate.

(2) Without limiting subsection (1), the Registrar may change the form in which a register or a part of a register is kept.

Delegation

9. The Registrar may delegate the Registrar's powers under this Act or another Act to an officer or employee of the department.

Division 2—General requirements for instruments in the freehold land register

Form of instruments

10.(1) An instrument lodged by a person or issued by the Registrar 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) However, the Registrar may register an instrument that is not in the appropriate form if the Registrar is satisfied it is not reasonable to require the instrument to have been executed in the appropriate form.

Execution of certain instruments

11.(1) An instrument to transfer or create an interest in a lot must be executed by—

- (a) the person to whom the interest is to be transferred or in whose favour the interest is to be created; or
- (b) a solicitor authorised by the person.

(2) A total or partial discharge or release of mortgage need only be signed by the mortgagee.

Consent to be written on instrument etc.

12. If the consent of a person is necessary for the sale or other dealing with a lot, the consent must be—

- (a) written on the relevant instrument; or
- (b) if the Registrar considers it appropriate—deposited with the relevant instrument.

Required number of executed copies to be lodged

13. The Registrar may refuse to register an instrument if the number of executed copies of the instrument prescribed by regulation are not lodged.

Registrar may authorise printing and sale of forms

14.(1) The Registrar may, on reasonable terms, authorise a person to print and sell the appropriate form for an instrument other than a certificate of title.

(2) A form for an instrument purporting to be authorised by the Registrar is the appropriate form for the instrument unless the contrary is proved.

(3) If there is an appropriate form for an instrument, a person must not print or sell a form for the instrument (whether or not it is the appropriate form) unless the person is authorised under subsection (1) to print and sell the appropriate form for the instrument.

Maximum penalty—50 penalty units.

(4) If there is an appropriate form for an instrument, a person must not knowingly use a form for the instrument that is not the appropriate form.

Maximum penalty—20 penalty units.

(5) If there is an appropriate form for an instrument a person must not knowingly use a form for the instrument (whether or not it is the appropriate form) that has been printed or sold by a person who has not been authorised under subsection (1) to print and sell the appropriate form

for the instrument.

Maximum penalty—20 penalty units.

Division 3—Powers of the Registrar

Registrar may correct registers in land registry

15.(1) The Registrar may correct any register in the land registry if the Registrar is satisfied that—

- (a) the register is incorrect; and
- (b) the correction will not prejudice the rights of the holder of an interest recorded in the register.

(2) The Registrar's power to correct a register includes power to correct a particular in the register or an instrument forming part of the register.

(3) If a register is corrected, the Registrar must record in the register—

- (a) the state of the register before the correction; and
- (b) the time, date and circumstances of the correction.

(4) A register corrected by the Registrar under this section has the same effect as if the relevant error had not been made.

Lot-on-plan description

16. The Registrar may simplify the description of a lot registered in the freehold land register by amending the existing description to a lot-on-plan description.

Registrar may prepare and register caveat

17.(1) The Registrar may prepare and register a caveat over a lot in favour of a registered proprietor of the lot or someone else who has an interest in the lot.

(2) The Registrar may act under subsection (1) to prevent a dealing with the lot that may prejudice—

- (a) the State or Commonwealth; or
- (b) a minor; or
- (c) a person who is intellectually or mentally impaired or is incapable of managing the person's own affairs; or
- (d) a person who is absent from the State; or
- (e) a person because of—
 - (i) misdescription of the lot or its boundaries; or
 - (ii) fraud or forgery.

Registrar may require public notice to be given of certain proposed action

18.(1) This section applies if a person (the “**applicant**”) asks the Registrar to do any of the following things—

- (a) register the person as an adverse possessor;
- (b) register a transmission of a registered interest;
- (c) issue a substitute registered instrument;
- (d) dispense with production of an instrument.

(2) The Registrar may, by written notice, require the applicant to give public notice of the request.

(3) However, if the applicant has asked the Registrar to register the person as an adverse possessor, the Registrar must require the applicant to give public notice of the request.

(4) The Registrar may specify in the notice to the applicant—

- (a) what is to be included in the public notice; and
- (b) how many times the public notice is to be published; and
- (c) how and when the public notice is to be published.

(5) The applicant must satisfy the Registrar that the public notice has been given as required by the Registrar.

Division 4—Inquiries**Registrar may decide to hold inquiry**

19. The Registrar may decide to hold an inquiry under this Division—

- (a) to decide whether a register should be corrected; or
- (b) to consider whether a person has fraudulently or wrongfully—
 - (i) obtained, kept or procured an instrument affecting land in a register; or
 - (ii) procured a particular in a register or an endorsement on an instrument affecting land; or
- (c) in circumstances prescribed by regulation.

Registrar's duties on inquiry

20. When conducting the inquiry, the Registrar—

- (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.

Registrar may decide procedures

21.(1) The Registrar—

- (a) is not bound by the rules of evidence; and
- (b) may inform himself or herself in any way the Registrar considers appropriate; and
- (c) may decide the procedures to be followed at the inquiry.

(2) However, the Registrar must comply with this Division and the procedural rules that may be prescribed by regulation.

Registrar's powers on inquiry

22.(1) In conducting the inquiry, the Registrar may—

- (a) act in the absence of a person who has been given reasonable notice; and
- (b) receive evidence on oath or affirmation or by statutory declaration; and
- (c) adjourn the inquiry; and
- (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 Queensland or elsewhere) to represent someone at the inquiry.

(2) The Registrar may administer an oath or affirmation to a person appearing as a witness before the inquiry.

Notice to witness

23.(1) The Registrar 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 the witness fees prescribed by regulation or, if no witness fees are prescribed, the reasonable witness fees decided by the Registrar.

Offences by witnesses

24.(1) A person who is given a notice under section 23 (Notice to witness) must not—

- (a) fail, without reasonable excuse, to attend as required by the notice; or
- (b) fail, without reasonable excuse, to continue to attend at the inquiry as required by the Registrar until excused from further attendance.

Maximum penalty—35 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; or

- (b) fail, without reasonable excuse, to answer a question the person is required to answer by the Registrar; or
- (c) fail, without reasonable excuse, to produce a document or thing the person is required to produce by a notice under section 23.

Maximum penalty—35 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.

Division 5—Registrar may refer matter to the Supreme Court

Referral to Supreme Court from inquiry

25.(1) If, in an inquiry under Division 4 (Inquiries), a person—

- (a) fails to attend as required by a notice given under section 23 (Notice to witness); or
- (b) fails to continue to attend as required by the Registrar; or
- (c) fails to take an oath or make an affirmation when required by the Registrar; or
- (d) fails to answer a question the person is required to answer by the Registrar; or
- (e) fails to produce a document or thing the person is required to produce by a notice under section 23;

the Registrar 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 in the Registrar's conduct of the inquiry that the Supreme Court considers appropriate.

Other referrals by the Registrar to the Supreme Court

26. In any matter under this Act, the Registrar may—

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

PART 3—FREEHOLD LAND REGISTER

Division 1—General

Registrar must keep register

27. The Registrar must keep a register of freehold land (the “**freehold land register**”).

Particulars the Registrar must record

28.(1) The Registrar must record in the freehold land register the particulars necessary to identify—

- (a) every lot brought under this Act; and
- (b) every interest registered in the register; and
- (c) the name of the person who holds, and the name of each person who has held, a registered interest; and
- (d) if the person who holds a registered interest is a minor—the minor’s date of birth; and
- (e) all instruments registered in the register and when they were lodged and registered.

(2) The Registrar must also record in the freehold land register anything else required to be recorded by this or another Act.

Particulars the Registrar may record

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

(2) The Registrar may also record in the freehold land register anything

that the Registrar considers should be recorded to ensure that the register is an accurate, comprehensive and useable record of freehold land in the State.

Registrar must register instruments

30.(1) If a person lodges an instrument and complies with the requirements of this Act for its registration, the Registrar must register the instrument.

(2) However, subsection (1) does not prevent the person from withdrawing the instrument.

Instruments form part of the freehold land register

31. On registration of an instrument in the freehold land register, the instrument forms part of the register.

Registrar must give distinguishing reference to each instrument

32. In registering an instrument affecting a lot, the Registrar must give the instrument a distinguishing reference and record the reference in the particulars in the freehold land register about the lot.

Separate part of the freehold land register for powers of attorney

33. The Registrar must keep a separate part of the freehold land register for registered powers of attorney.

Other information not part of the freehold land register

34. The Registrar may keep separately from the freehold land register information that the Registrar considers necessary or desirable for the effective or efficient operation of the register.

Entitlement to search register

35.(1) At any time when an office of the land registry is open for business and on payment of the fee prescribed by regulation, a person may—

- (a) search and obtain a copy of—
 - (i) the indefeasible title of a lot; or
 - (ii) a registered instrument; or
 - (iii) an instrument that has been lodged but is not registered (whether or not it has been cancelled); or
 - (iv) information kept under this Act; and
- (b) obtain a copy of the indefeasible title of a lot, or a registered instrument, certified by the Registrar to be an accurate copy.

(2) Subsection (1)(a)(iii) does not apply to an instrument that has been destroyed by the Registrar.

Evidentiary effect of certified copies of documents

36.(1) A document purporting to be a certified copy of the indefeasible title of a lot obtained under section 35(1)(b) (Entitlement to search register) is evidence of the indefeasible title.

(2) A document purporting to be a certified copy of a registered instrument obtained under section 35(1)(b) is evidence of the registered instrument.

Division 2—Indefeasible title

Creation of indefeasible title

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

Meaning of “indefeasible title”

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

Single infeasible title for 2 or more lots

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

(2) The Registrar may act under this section if the Registrar considers that, in the special circumstances of the case, it is appropriate for the lots to have a single infeasible title.

(3) Without limiting subsection (2), the Registrar 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 or watercourse.

Separation of single infeasible title for 2 or more lots

40.(1) If the Registrar has created a single infeasible title for 2 or more lots, the Registrar may create separate infeasible titles for any of the lots by cancelling the single set of particulars for the lots in the freehold land register and including separate particulars for the lots.

(2) This section does not prevent the Registrar from also acting under section 39 (Single infeasible title for 2 or more lots) for 2 or more of the lots.

Transfer of land forming part of infeasible title

41. If the Registrar registers an instrument of transfer for only part of the land in the infeasible title of a lot, the Registrar must create separate infeasible titles for the part of the land that is transferred, and the part that is not transferred, by cancelling the particulars for the lot in the freehold land register and including separate particulars for each of the parts in the register.

Division 3—Certificates of title

Issuing of certificates of title

42.(1) The Registrar may issue a certificate containing the indefeasible title for a lot (the “**certificate of title**”) at the written request of the registered owner.

(2) However, the Registrar must not issue the certificate of title for the lot if the lot is subject to a registered mortgage.

(3) Also, if an instrument has been lodged to register an interest in the lot, the Registrar may refuse to issue the certificate of title until the instrument has been registered.

(4) The Registrar may give the certificate of 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.

Certification to be included in certificate of title

43. The certificate must be certified by the Registrar as an accurate statement of the current particulars in the freehold land register about the lot.

Note about issue of certificate of title etc.

44. If the Registrar issues a certificate of title for a lot, the Registrar—

- (a)** must make a note in the particulars for the lot in the freehold land register that the certificate has been issued; and
- (b)** may issue a second certificate only if the first certificate is cancelled.

Cancellation of certificate of title on deposit

45. Unless the Registrar otherwise directs, a certificate of title that is

deposited in the land registry is cancelled, whether or not a note of the cancellation is made on it.

Evidentiary effect of certificate of title

46. A certificate of title of a lot is conclusive evidence of the indefeasible title for the lot when it is issued—

- (a) other than in the circumstances described in sections 169(3)(b) (Quality of registered interests) and 170(1)(c) to (g) (Exceptions to s 169); or
- (b) except as far as the particulars specified in the certificate in fact differ from the indefeasible title.

PART 4—REGISTRATION OF LAND

Division 1—Alienation of State land

Alienated State land to be registered

47.(1) If land is alienated from the State, the deed of grant for the land must be lodged in the land registry.

(2) The Registrar must register the deed of grant by recording the particulars of the grant in the freehold land register.

(3) On the registration of the deed of grant, an indefeasible title is created for the relevant lot.

Division 2—Land held by State

Land held by the State

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

Division 3—Subdividing lots**Subdivision of lot by registering plan of subdivision**

49. A lot may be subdivided by registering a plan of subdivision of the lot.

Requirements for registration of plan of subdivision

50. A plan of subdivision of a lot must—

- (a) distinctly show all roads, parks, reserves and other proposed lots that are to be dedicated to public use (the “**public use land**”); and
- (b) include a statement by the registered owner agreeing to the plan and dedicating the public use land; and
- (c) show all proposed lots marked with separate and distinct numbers; and
- (d) show all proposed easements marked with separate and distinct letters; and
- (e) comply with the *Surveyors Act 1977*; and
- (f) be certified as accurate by a licensed surveyor; and
- (g) have been approved by the local government concerned.

Dedication of public use land in plan

51. The dedication of a lot to public use in a plan of subdivision—

- (a) must be of the registered owner’s whole interest in the lot other than for any part of the lot reserved below the surface to the registered owner; and
- (b) operates on registration of the plan, without anything further, to vest the lot in the State.

Particulars of lots to be recorded on registration of plan

52. In registering a plan of subdivision, the Registrar must record in the

freehold land register particulars of each proposed lot not dedicated to public use.

Lodged plan that is withdrawn and re-lodged

53. If a plan of subdivision is lodged within the time specified in section 5.3 of the *Local Government (Planning and Environment) Act 1990* and is withdrawn and re-lodged under section 144 (Withdrawing lodged instrument before registration), it must be treated for the purposes of sections 160 (Time from when instrument forms part of register etc.) and 163 (Priority of registered instruments) to have been lodged when it was first lodged.

Subdivision where road or watercourse excluded

54.(1) A lot may be subdivided by a plan of subdivision, even though there is a road or watercourse within the boundaries of the lot that is not part of the lot.

(2) However, the road 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.

PART 5—JOINT HOLDERS IN A LOT

Registering life interests and remainders

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

Registering co-owners

56.(1) In registering an instrument transferring an interest to co-owners, the Registrar must also register the co-owners as holding their interests as tenants in common or as joint tenants.

(2) If the instrument does not show whether co-owners are to hold as tenants in common or as joint tenants, the Registrar must register the co-owners as tenants in common.

Separate indefeasible titles for tenants in common

57.(1) If a lot is, or is to be held, by 2 or more registered owners as tenants in common, the Registrar may create a separate indefeasible title for the interest of each owner by including a separate set of particulars in the freehold land register for the interest of each owner.

(2) The Registrar may act under this section at the request of an owner.

Time share schemes

58. If a registered owner of a lot subject to a time share scheme proposes to transfer to each participant in the scheme an interest as tenant in common with other participants, the Registrar may create in the name of the registered owner—

- (a) separate indefeasible titles for each interest by including a separate set of particulars in the freehold land register for each interest; or
- (b) a single indefeasible title for several interests by including a single set of particulars in the freehold land register for the interests.

Severing joint tenancy

59.(1) A registered owner of a lot subject to a joint tenancy may unilaterally sever the joint tenancy by registration of a transfer executed by the registered owner.

(2) However, the Registrar may register the instrument of transfer only if a registered owner satisfies the Registrar that a copy of the instrument has been given to all other joint tenants.

(3) On registration of the instrument of transfer, 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

Registering a transfer

60.(1) 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, part of a lot may not be transferred.

Requirements of instrument of transfer

61.(1) An instrument of transfer for a lot or an interest in a lot must—

- (a) be validly executed; and
- (b) include particulars sufficient to identify—
 - (i) the lot to be transferred; or
 - (ii) the lot to which the interest applies; and
- (c) include an acknowledgment of the amount paid or details of other 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.

Effect of registration of transfer

62.(1) On registration of an instrument of transfer for a lot or an interest in a lot, 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.

Transfer of mortgaged lot

63.(1) If a lot, or an interest in a lot, 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 must register the mortgagee as registered owner released from the mortgage.

(3) The Registrar must act under subsection (2) unless the mortgagee asks the Registrar not to act under the subsection.

Division 2—Leases

Registering a lease

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

Requirements of instrument of lease

65.(1) An instrument of lease for a lot or part of a lot must—

- (a) be validly executed; and
- (b) include a description sufficient to identify the lot or part of the lot to be leased; and
- (c) include an acknowledgment 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's satisfaction; or
- (b) if required by the Registrar—a plan of survey identifying the part of the lot.

(3) However, the Registrar may allow the part of the lot to be identified by a description alone if the Registrar 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 transfer may require to be included in the instrument.

Validity of lease or amendment of lease against mortgagee

66. 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.

Amending a lease

67.(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) increase or decrease the area leased; or
- (b) add or remove a party to a lease; or
- (c) be lodged after the lease's term has ended.

(4) The procedure for amendment specified in this section is in addition to other rights that are not inconsistent with this Act.

Re-entry by lessor

68.(1) If a lessor under a registered lease of a lot or part of a lot lawfully re-enters and takes possession under the lease, the lessor may lodge a request for the Registrar to register the re-entry.

(2) The interest of the lessee ends on the registration of the request for the re-entry.

Surrendering a lease

69.(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 sub-lessee of the lessee.

(3) If an instrument of surrender of lease is lodged, the Registrar may register the instrument and record the date of surrender specified in the instrument in the freehold land register.

(4) On registration of an instrument of surrender of a registered lease, the interest of the lessee vests in the lessor.

(5) This section does not apply to a surrender or disclaimer under a law about bankruptcy.

Disclaimer in bankruptcy

70. The Registrar may register a disclaimer of a lease or other interest in a lot under a law about bankruptcy only if notice of the disclaimer and a request to register it is lodged.

Validity of unregistered lease

71. An unregistered lease of a lot or part of a lot is not invalid merely because it is unregistered.

Division 3—Mortgages**Mortgaging lot etc. by registration**

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

Requirements of instrument of mortgage

73.(1) An instrument of mortgage must—

- (a) be validly executed; and
- (b) include a description sufficient to identify the lot to be mortgaged; and
- (c) include an acknowledgment of the debt or liability secured by the mortgage; and
- (d) include a description sufficient to identify the interest to be mortgaged.

(2) If the mortgagor is borrowing as a trustee, a document specifying the details of the trust or the document creating the trust must be deposited with the mortgage.

(3) Subsection (1) does not limit the matters that the appropriate form for an instrument of mortgage may require to be included in the form.

Effect of registration of a mortgage

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

Equitable mortgage

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

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

Amending a mortgage

76.(1) A registered mortgage may be amended by registering an instrument of amendment of the mortgage.

(2) However, the instrument of amendment must not—

- (a) increase or decrease the area of land charged by the mortgage; or
- (b) add or remove a party to the mortgage.

Amending priority of mortgages

77.(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 registration of the instrument amending priority, the mortgages have priority in the order specified in the instrument.

Powers of mortgagee

78.(1) A mortgagee of a registered lot has the powers and liabilities of a mortgagee under Part 7 of the *Property Law Act 1974*.

(2) Without limiting subsection (1), but subject to the terms of the mortgage, if the mortgagor defaults under a registered mortgage, the mortgagee may—

- (a) take possession of the mortgaged lot in a way that does not contravene section 70 of the Criminal Code; or

- (b) enter into possession of the mortgaged lot by receiving rents and profits; or
- (c) by a proceeding in the Supreme Court—
 - (i) obtain possession of the mortgaged lot; or
 - (ii) foreclose the right of the mortgagor to redeem the mortgaged lot; or
 - (iii) obtain an order of the Supreme Court for the sale of the mortgaged lot.

(3) The powers in this section are in addition to other powers exercisable by the mortgagee.

Effect of transfer after sale by mortgagee

79. 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 the mortgage and any other mortgage registered after it.

Liability of mortgagee in possession of leased lot

80.(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 amount of rents, profits or other benefits received by the mortgagee during the mortgagee's possession.

Releasing a mortgage

81.(1) On lodgment of an instrument releasing a mortgage, the Registrar may register the release to the extent shown in the instrument of release.

(2) The instrument of release may release the debt or liability secured for—

- (a) all or part of the mortgage; or
- (b) 1 or more of the mortgagors.

(3) On registration of the instrument of release, the mortgage is discharged, and the lot is released from the mortgage, to the extent shown in the instrument of release.

Division 4—Easements

Subdivision A—General

Creation of easement by registration

82. An easement over a lot may be created by registering an instrument of easement.

Particulars to be registered

83. When registering an instrument of easement, the Registrar must record particulars of the following in the freehold land register—

- (a) the lot burdened by the easement; and
- (b) any lot benefited by the easement; and
- (c) any registered lease benefited or burdened by the easement.

Limitation of easements

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

Instrument of easement also affecting unregistered land

85. An instrument of easement that benefits or burdens a lot may be registered even though it also affects land that is not registered.

Easement benefiting and burdening same registered owner's lots

86. 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.

Same person becoming registered owner of benefited and burdened lots

87. 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 to extinguish the easement; or
- (b) the Registrar creates a single indefeasible title for the lots.

Owner of benefited land acquiring interest in burdened land

88. 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.

Easements for public utility providers

89. An instrument of easement may be registered in favour of any of the following entities (a “**public utility provider**”) even though it is not attached to, or used or enjoyed with, another lot—

- (a) the State or a State corporation or instrumentality;
- (b) the Commonwealth or a Commonwealth corporation or instrumentality;
- (c) a local government;
- (d) a person authorised by law to provide a public utility service.

Surrendering an easement

90.(1) A registered easement may be wholly or partly surrendered by registering an instrument of surrender of the easement.

(2) The instrument of surrender 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; or
- (c) only the public utility provider in whose favour the easement is registered.

(3) However, a registered easement may be surrendered only if all registered mortgagees and lessees of the lot benefited by the easement consent to the surrender.

(4) Subsection (3) does not apply to a lessee who does not receive a benefit from the easement.

Amending an easement

91.(1) A registered easement may be amended by registering an instrument of amendment of the easement.

(2) However, the instrument of amendment must not—

- (a) change the location of the easement; or
- (b) increase or decrease the area of land affected by the easement; or
- (c) change a party to the easement.

Application of s 181 of Property Law Act 1974

92. Section 181 of the *Property Law Act 1974* applies to a registered easement.

Subdivision B—Creation of easements by registration of plans**Easement only created in accordance with Subdivision**

93. Registration of a plan creates an easement only if the plan is registered under this Subdivision.

Registration of plan showing proposed easement

94.(1) A plan designating a proposed easement may be registered only if the designation includes the words ‘proposed easement’.

(2) The designation—

- (a) does not create an easement; and
- (b) is not evidence of a present intention to create an easement.

Creation of easement by plan of subdivision

95.(1) An easement may be created by registering—

- (a) a plan of subdivision showing clearly the nature and location of the easement to be created on the plan’s registration; and
- (b) an instrument of easement executed by the registered owner of the lot to be burdened by the easement.

(2) The instrument must specify—

- (a) the nature of the easement and its terms; and
- (b) the lot to be benefited, and the lot to be burdened, by the easement.

(3) Subsection (2)(b) does not apply to an easement in favour of a public utility provider that is not attached to, or used or enjoyed with, another lot.

Limitations on creation of easements under Subdivision

96.(1) An easement may be created under this Subdivision only if—

- (a) the lot burdened and the lot benefited are in common ownership;
or

- (b) the easement is in favour of a public utility provider and is not attached to, or used and enjoyed with, another lot.

(2) An easement may be created under this Subdivision only for the following—

- (a) right of way;
- (b) drainage or sewerage;
- (c) the supply of water, gas, electricity, telecommunication facilities or another public utility service.

Rights created on registration of plan and instrument

97.(1) On registration of a plan under this Subdivision, the proposed easement shown on the plan is created and, without anything further, vests in the person entitled to the benefit of it.

(2) If the easement is in favour of a public utility provider, the registered owner of a lot burdened by the easement may recover from the public utility provider a reasonable contribution towards the cost of keeping the part of the lot affected by the easement in a condition appropriate for enjoyment of the easement.

(3) The liability to contribute may be amended or excluded by agreement.

Division 5—Application by adverse possessor

Application may not be made about encroachment

98. An application may not be made under this Division if it is about land that is an encroachment as defined in section 183 of the *Property Law Act 1974*.

Application for registration

99.(1) A person (the “**applicant**”) may apply to be registered as owner of a lot by lodging an application under this Division.

(2) The application must be accompanied by—

- (a) the documents of title for the lot that are in the possession or under the control of the applicant; and
- (b) if required by the Registrar—a plan of survey of the lot.

Withdrawal of application

100.(1) The applicant may withdraw the application at any time before the applicant is registered as owner of the lot under this Division.

(2) If the applicant withdraws the application, the Registrar must, if asked by the applicant, return all documents lodged or deposited in support of the application.

Right to make application not affected by death etc.

101.(1) If a person who may apply to be registered as owner of a lot by lodging an application under this Division dies without making the application, the application may be made in the person's name by the person's legal personal representative.

(2) If the applicant dies before the application has been dealt with under this Division, the application may be continued, and any necessary steps taken, in the person's name by the person's legal personal representative.

Refusal of application

102. The Registrar may refuse to register the applicant as owner of the lot if the Registrar is not satisfied that the information and documents in support of the application establish that the applicant is an adverse possessor.

Notice of application

103.(1) Before registering the applicant as an adverse possessor, the Registrar must, to the extent the Registrar considers practicable, give written notice of the application to—

- (a) all registered proprietors of the lot and adjoining lots; and
- (b) anyone else the Registrar considers may have an interest in the

lot.

(2) The notice is in addition to the public notice that the applicant must give under section 18(3) (Registrar may require public notice to be given of certain proposed action).

(3) The notice must include a statement to the effect that the applicant will be registered as the owner of the lot if a caveat is not lodged by a specified day.

(4) The specified day must be at least 2 months and not more than 6 months from the day public notice is last required to be given.

Objecting by caveat

104. A person who claims an interest in the lot may lodge a caveat over the lot at any time before the applicant is registered as owner of the lot.

Lapsing of caveat

105.(1) If the Registrar is not satisfied—

- (a) that the caveator has an interest in the lot; or
- (b) that any interest that the caveator has in the lot has not been extinguished under the *Limitation of Actions Act 1974*;

the Registrar must, by written notice given to the caveator, require the caveator to start a proceeding to recover the lot in the Supreme Court within 6 months after the notice is given.

(2) The caveat lapses unless, within the required time, the caveator—

- (a) starts a proceeding in the Supreme Court to recover the lot; and
- (b) gives written notice to the Registrar that the proceeding has started.

(3) The caveat also lapses if—

- (a) the proceeding is withdrawn or dismissed; or
- (b) judgment in the proceeding is given against the caveator and the time for appealing against the judgment expires without an appeal being lodged; or

- (c) if the judgment in the proceeding is given against the caveator and the judgment is appealed—the appeal is dismissed or withdrawn.

(4) In this section—

“**required time**” means—

- (a) the 6 months mentioned in subsection (1); or
- (b) if the Registrar proposes to act under section 107(1)(b) (Refusing or compromising application)—the time allowed under section 107(3).

Reviving or replacing caveat

106. If the caveat lapses or is withdrawn, cancelled or removed, the caveator may revive or replace the caveat with another caveat on the same, or substantially the same, grounds only with the Supreme Court’s leave.

Refusing or compromising application

107.(1) If the Registrar is satisfied that the caveator has an interest in the lot that has not been extinguished under the *Limitation of Actions Act 1974*, the Registrar may—

- (a) refuse to register the applicant as owner of the lot; or
- (b) if the caveator agrees, register the applicant as the holder of a lesser interest in the lot that the Registrar considers appropriately reflects—
 - (i) the use made of the lot by the applicant; and
 - (ii) the period that the applicant has used the lot.

(2) If the caveator does not agree to the registration of the applicant for a lesser interest in the lot, the caveator may start a proceeding in the Supreme Court to recover the lot.

(3) The proceeding must be started within 1 month of receiving written notice from the Registrar of the Registrar’s intention to register the applicant as proprietor of a lesser interest in the lot.

(4) If the caveator does not start a proceeding within 1 month, the

Registrar may register the applicant as the holder of a lesser interest in the lot.

Registering adverse possessor as owner

108.(1) The Registrar may register the applicant as owner of all or part of the lot if the Registrar is satisfied that the applicant is an adverse possessor of the lot or part of it and—

- (a) no caveat has been lodged by the day specified under section 103 (Notice of application); or
- (b) if a caveat is lodged by the day specified under section 103—
 - (i) the caveat has lapsed or has been withdrawn, cancelled or removed; and
 - (ii) has not been revived or replaced under section 106 (Reviving or replacing caveat).

(2) If the Registrar registers the applicant as owner of the lot, the Registrar must—

- (a) cancel the registration of the person previously registered as the owner of the lot; and
- (b) create in the applicant's name an indefeasible title free of all other interests in the lot.

Division 6—Trusts, deceased estates and bankruptcy

Trusts generally not to be registered

109. If an interest in a lot is held in trust, the trustee may be registered as trustee of the interest only as permitted by section 110 (Instrument of transfer to trustee).

Instrument of transfer to trustee

110.(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 may register the instrument of transfer.

(3) A document specifying details of the trust, or the document creating the trust, must be deposited with the instrument of transfer.

(4) The document deposited with the instrument of transfer does not form part of the freehold land register.

(5) The Registrar must keep a certified copy of the document and return the original to the person who deposited it.

Registering personal representative

111.(1) A person may lodge an application to be registered as personal representative for a registered proprietor of a lot who has died.

(2) The Registrar may register the lot in the name of the person as personal representative only if—

(a) if the person has obtained a grant of representation, or the resealing of a grant of representation, in Queensland—the grant or resealing, or an office copy of the grant or resealing issued by the Supreme Court, is deposited; or

(b) if paragraph (a) does not apply and the registered proprietor died without a will—

(i) letters of administration of the deceased person's estate have not been granted in Queensland within 6 months after the death; and

(ii) the gross value of the deceased person's Queensland estate at the date of death was no more than the amount prescribed by regulation or, if no amount is prescribed, \$150 000; and

(iii) the Registrar is of the opinion that the person would succeed in an application for a grant of representation; or

(c) if paragraph (a) does not apply and the registered proprietor died leaving a will—the Registrar is of the opinion that the person would succeed in an application for a grant of representation.

(3) A person registered under this section without a grant of

representation has the same rights, powers and liabilities as if a grant of representation had been made to the person.

(4) The validity of an act done or payment made in good faith by a person registered under this section is not affected by a later grant of representation.

(5) If the grantee of a grant of representation is different from the person registered under subsection (2), the person registered must—

- (a) account to the grantee for all property of the deceased person controlled by the person before the grant; and
- (b) take all action necessary to divest from the person and vest in the grantee all property of the deceased person remaining under the person's control.

Registering beneficiary

112.(1) A person who is beneficially entitled under a will to a lot of a deceased registered proprietor may apply to the Registrar to be registered as proprietor of the lot.

(2) However, the Registrar may register the person only if—

- (a) the written consent of the deceased's personal representative is given; and
- (b) the person satisfies the Registrar that the person is beneficially entitled to the lot.

Form of application

113. An application under section 111 (Registering personal representative) or 112 (Registering beneficiary) must state—

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

Applying for Supreme Court order

114.(1) This section applies to—

- (a) the Attorney-General; or
- (b) a trustee or beneficiary under a trust; or
- (c) a personal representative, a devisee or anyone else interested in—
 - (i) a lot of a deceased registered proprietor; or
 - (ii) a trust involving a lot of a deceased registered proprietor.

(2) A person to whom this section applies may apply to the Supreme Court for an order that a named person be registered as proprietor of a lot.

(3) The Supreme Court may make 1 or more of the following orders—

- (a) that a person be registered as proprietor of the lot;
- (b) that a person be removed from the freehold land register as proprietor of the lot;
- (c) that a caveat be lodged to protect a person's interest in the lot;
- (d) that a person advertise in a specified form, content or way;
- (e) that costs be paid by any person or out of any property.

(4) The Registrar must register particulars of an order if a request to register the order is lodged and an office copy of the order is deposited.

(5) An order does not vest an interest in the lot until it is registered.

Transmission on bankruptcy

115. The Registrar 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.

PART 7—OTHER DEALINGS

Division 1—Writs of execution

Registering a writ of execution

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

Effect of registering a writ of execution

117. For purchasers, lessees, mortgagees and creditors, a writ of execution—

- (a) cannot, until registered, bind or affect registered lots, 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) 6 months of its lodgment; or
 - (ii) the extended time allowed by the court where the writ is filed and notified to the Registrar.

Cancellation of registration

118. Registration of a writ of execution may be cancelled if—

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

Discharging or satisfying writ of execution

119. Discharge or satisfaction of a writ of execution may be registered if a request to register it is lodged.

Transfer of lots sold in execution

120.(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 registration of the transfer, the transferee becomes the registered owner of the lot subject to—

- (a) registered interests; and
- (b) equitable mortgages notified by caveat lodged before registration of the writ of execution.

Division 2—Caveats**Requirements of caveats**

121.(1) A caveat must be signed by or for the caveator.

(2) The caveat must state—

- (a) the name of the caveator; and
- (b) an address where documents can be served on the caveator; and
- (c) unless the Registrar 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; and
- (d) the registered interest affected by the caveat; and
- (e) if the caveat relates to only a part of a lot—a description of the affected part; and
- (f) the interest claimed by the caveator; and
- (g) the grounds on which the interest is claimed.

(3) This section applies to all caveats under this Act.

Lodging a caveat

122. A caveat may be lodged by any of the following—

- (a) a person claiming an interest in a lot;
- (b) the Registrar under section 17 (Registrar may prepare and register caveat);
- (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.

Notifying caveat

123. The Registrar 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.

Effect of lodging caveat

124.(1) Lodgment of a caveat prevents registration of an instrument affecting the lot until the caveat lapses or is withdrawn, removed or cancelled.

(2) However, lodgment 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 its registration;
- (c) an instrument executed by a mortgagee whose interest was registered before lodgment of the caveat 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 lodgment of the caveat;
- (e) another interest that, if registered, will not affect the interest claimed by the caveator.

(3) The exceptions mentioned in subsection (2)(c) and (d) do not apply to a caveat lodged by the Registrar.

(4) The exception in subsection (2)(d) does not apply to a caveat lodged by the registered owner.

Withdrawing a caveat

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

Lapsing of caveat

126.(1) This section does not apply to a caveat if—

- (a) it is lodged by the registered owner; or
- (b) the consent of the registered owner is deposited when the caveat is lodged; or
- (c) an office copy of a court order mentioned in section 122(d) or (e) (Lodging a caveat) is deposited when the caveat is lodged; or
- (d) it is lodged by the Registrar under section 17 (Registrar may prepare and register caveat); or
- (e) is lodged other than under this Division.

(2) 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 the Supreme Court to establish the interest claimed under the caveat.

(3) The caveatee must notify the Registrar within 14 days of service of the notice on the caveator.

(4) If a caveator does not want a caveat to which this section applies to lapse, the caveator must—

- (a) start a proceeding in the Supreme Court to establish the interest claimed under the caveat—
 - (i) if a notice under subsection (2) is served on the caveator—within 14 days after the notice is served on the caveator; or
 - (ii) if a notice under subsection (2) is not served on the caveator—within 3 months after the lodgment of the caveat; and
- (b) notify the Registrar within the 14 days or the 3 months that a proceeding has been started and identify the proceeding.

(5) If the caveator does not comply with subsection (4), the caveat lapses.

(6) The caveator is taken to have complied with subsection (4)(a) if a proceeding has been started in the Supreme Court to establish the interest claimed under the caveat before the caveat was lodged.

(7) The Registrar may remove a caveat that has lapsed from the freehold land register.

Removing a caveat

127.(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.

Cancelling a caveat

128.(1) The Registrar may cancel a caveat if a request to cancel the caveat is lodged and the Registrar is satisfied that—

- (a) the interest claimed by the caveator has ceased or the claim to it has been abandoned or withdrawn; or
- (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 must notify the caveator of the Registrar's intention to cancel the caveat at least 7 days before cancelling it.

(3) If an instrument that has been lodged will, on registration, give full effect to an interest claimed in a caveat, the Registrar may remove the caveat immediately before registering the instrument.

Further caveat

129. If a caveat lapses or is withdrawn, cancelled or removed for 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.

Compensation for improper caveat

130.(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), proof that a caveat was not lodged or was not continued without reasonable cause rests on the person who lodged or continued the caveat.

Notices to the caveator

131.(1) A notice to a caveator under this Division is sufficiently served if left at or sent to the address mentioned in section 121(2)(b) (Requirements of caveats).

(2) If the Registrar 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.

(3) If the Registrar is informed in writing, and is satisfied, that the name or address of the caveator has changed, the Registrar must note on the

caveat details of the new name or address.

(4) A new name or address noted under subsection (3) becomes the name or address for service of a notice on the caveator.

Division 3—Powers of attorney and disabilities

Power of attorney

132. By giving and registering a power of attorney, the donor authorises the donee to deal with any interest in land that may be dealt with by the donor under this Act.

Registering a power of attorney

133.(1) The Registrar may register a power of attorney by recording particulars of it in the power of attorney register if a request to register it is lodged and the power of attorney is deposited with the request.

(2) The Registrar must keep a certified copy of the registered power of attorney and return the original to the person who deposited it.

Effect of registering a power of attorney

134.(1) An act done by the donee under and in accordance with the terms of a registered power of attorney has the same effect as if the act were done by the donor.

(2) A registered power of attorney is evidence that the donee is authorised to do anything within the terms of the power of attorney.

(3) The Registrar may register an instrument executed under a registered power of attorney without being satisfied that the power of attorney has not been revoked.

(4) The Registrar must not register an instrument executed under a registered power of attorney if the instrument became effective after—

- (a) registration of an instrument of revocation or disclaimer of the power of attorney; or

- (b) someone else is registered as owner of the relevant lot after the death or bankruptcy of the donor.

Revoking or disclaiming a power of attorney

135.(1) A registered power of attorney may be revoked by registering an instrument of revocation or disclaimer.

- (2) This section applies to enduring powers of attorney.

Persons under a disability

136. 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.

Acts for minors and by attorneys etc.

137.(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 the person's 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

When instrument capable of registration

138. The Registrar may register an instrument only if—

- (a) it complies with this Act; and
- (b) it appears on its face to be capable of registration.

Lodging certificate of title

139.(1) An instrument may be registered for a lot only if any certificate of title for the lot is returned for cancellation.

(2) However, a certificate of title need not be returned for cancellation with any of the following—

- (a) an instrument of transfer of a registered lease that is lodged without the lessor's consent;
- (b) a request to register a writ of execution;
- (c) a caveat lodged under Part 7 (Other dealings), Division 2 (Caveats);
- (d) a request to register a power of attorney;
- (e) an instrument for which the Registrar has dispensed with production of the certificate of title.

Correcting unregistered instruments

140.(1) The Registrar may correct an obvious error in a lodged plan of survey by—

- (a) drawing a line through the error without making the original words illegible; and
- (b) writing in the correct information; and
- (c) dating and initialling the correction.

(2) The Registrar may correct an obvious error in a lodged instrument (other than a plan of survey) by noting the correction on the instrument.

(3) The Registrar may correct an obvious error in a lodged instrument only if the Registrar 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 under this section has the same effect as if the relevant error had not been made.

Requisitions

141.(1) The Registrar may, by written notice (the “**requisition**”) 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 to be wrong, incomplete or defective; or
- (b) to produce to the Registrar specified information, or deposit a specified instrument or document, in support of the person’s application to register the instrument.

(2) The Registrar may require the instrument, document or information to be verified by statutory declaration or affidavit.

(3) The requisition may specify when, and the place where, it must be complied with.

(4) The Registrar may extend the time for complying with the requisition.

(5) The Registrar 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 requisition.

Rejecting instrument for failure to comply with requisition

142.(1) If a requisition under section 141 (Requisitions) is not complied with by a person within the time specified or extended by the Registrar, the Registrar may reject the instrument or document to which the requisition relates and any instrument that depends on it for registration.

(2) An instrument rejected under subsection (1) loses its priority under

section 163 (Priority of registered instruments) and must be returned by the Registrar 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 registry.

(4) This section does not prevent re-lodgment of a rejected instrument after the requisition has been complied with.

Borrowing lodged instrument before registration

143.(1) The Registrar may permit the following persons to borrow a lodged instrument before it is registered—

- (a) a person who lodged or deposited an instrument; or
- (b) a person on whose behalf an instrument was lodged or deposited;
or
- (c) the agent of a person mentioned in subsection (1)(a) or (b).

(2) The person must return the instrument to the land registry within the time specified by the Registrar.

(3) The Registrar may extend the time for returning the instrument.

(4) A person must not fail to return the instrument to the land registry within the time specified or extended by the Registrar, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

Withdrawing lodged instrument before registration

144.(1) If the Registrar is satisfied that the order in which an instrument has been lodged in relation to other instruments is such that the instrument will not give effect to the intention expressed in it or a related instrument, or is an instrument that should not have been lodged, the Registrar may—

- (a) withdraw the instrument; or
- (b) permit the instrument to be withdrawn.

(2) An instrument that is withdrawn by the Registrar under

subsection (1) remains in the land registry, unless the instrument is an instrument that should not have been lodged.

(3) The Registrar may re-lodge an instrument that has been withdrawn by the Registrar.

(4) On receiving a written application, the Registrar may re-lodge an instrument that the Registrar 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 at the time of its re-lodgment.

(6) Subsection (5) does not apply to a plan of subdivision mentioned in section 53 (Lodged plan that is withdrawn and re-lodged).

Registrar may call in instrument for correction or cancellation

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

Execution and proof

146.(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 46 of the *Property Law Act 1974*.

(2) For an individual, 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 may, in exceptional circumstances, register an instrument executed by an individual 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.

(5) This section does not apply to a plan of survey.

Obligations of witness for individual

147. A person who witnesses an instrument executed by an individual must—

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

Substitute instrument

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

(2) The Registrar may endorse on the substitute instrument—

- (a) that the instrument is a substitute replacing a lost or destroyed instrument; and
- (b) the date that the substitute instrument was issued; and
- (c) that the substitute is to be used in place of the original instrument; and
- (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 the issue of the substitute instrument under subsection (1)—

- (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 must record in the freehold land register that the substitute instrument has been issued and the date it was issued.

Dispensing with production of instrument

149.(1) The Registrar may dispense with the production of an instrument.

(2) The Registrar 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 must record in the freehold land register that production of the instrument has been dispensed with and the date production of it was dispensed with.

Requiring plan of survey to be lodged

150.(1) The Registrar 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 of survey of the lot.

(2) The plan of survey must comply with the *Surveyors Act 1977* and must be certified as accurate by a licensed surveyor.

Destroying instrument in certain circumstances

151.(1) The Registrar may destroy a part of the freehold land register or an instrument held in the land registry if the part of the register or the instrument—

- (a) is not evidence of an existing interest; or
- (b) is evidence of an existing interest of which there is accurate evidence in another part of the register; or
- (c) will not be required for registering the effect of a transaction.

(2) Before destroying a part of the register or an instrument under subsection (1), the Registrar must copy it in whatever way the Registrar considers appropriate.

(3) However, the Registrar must not destroy an original will.

(4) The Registrar may return a suitably perforated cancelled deed of grant or certificate of title to the person who, immediately before its cancellation, was entitled to it.

(5) The Registrar's power under subsection (1) is subject to the *Libraries and Archives Act 1988*.

Transferor must do everything necessary etc.

152. 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—Documents forming part of instruments**Meaning of “document” in Division**

153. In this Division—

“**document**” means a document containing provisions that are treated as terms of an instrument to which it is to apply or applies.

Document to which instrument refers may be registered

154.(1) The Registrar or another person may lodge a document and may amend the document by lodging a further document.

(2) The lodged document must be given a distinguishing reference and must be registered.

Document that is part of an instrument

155. All or part of a registered document, or an amended registered 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 document as an instrument to which the document applies.

Instrument not limited to that contained in document

156.(1) In addition to the provisions in a registered document, an instrument may include a provision incorporating other terms into the instrument.

(2) If there is a conflict between the document and the terms in an instrument, the instrument prevails.

Withdrawal or cancellation of document

157.(1) The Registrar may withdraw a registered document if asked to withdraw it by the person who lodged it.

(2) The Registrar may cancel a registered document lodged by the Registrar after giving 1 month's notice in the Gazette.

(3) The Registrar must keep and, if asked, produce for inspection a copy of a document cancelled or withdrawn under this section.

(4) Withdrawal or cancellation of a document does not affect an instrument already registered or executed within 7 days after its withdrawal or cancellation.

PART 9—REGISTRATION OF INSTRUMENTS AND ITS EFFECT

Division 1—Registration of instruments

How an instrument is registered

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

When an instrument is registered

159. An instrument is registered when the particulars are recorded in the freehold land register.

Time from when instrument forms part of register etc.

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

Registered instrument operates as a deed

161. A registered instrument operates as a deed.

Order of registration of instruments

162.(1) Instruments must be registered in the order in which they are lodged.

(2) Subsection (1) is subject to section 144 (Withdrawing lodged instrument before registration).

Priority of registered instruments

163.(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 as the date and time of the lodgment unless the contrary is proved.

(3) Subsection (1) is not affected by actual, implied or constructive notice.

Evidentiary effect of recording particulars in the freehold land register

164. In all proceedings, the particulars of a registered instrument recorded in the freehold land register are conclusive evidence of—

- (a) the registration of the instrument; and
- (b) the contents of the instrument; and
- (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 A—General*****Benefits of registration**

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

Interest in a lot not transferred or created until registration

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

Effect of registration on interest

167. On registration of an instrument that is expressed to transfer or create an interest in a lot, the interest—

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

Right to have interest registered

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

Subdivision B—Indefeasibility**Quality of registered interests**

169.(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; and
- (b) 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 170 (Exceptions to s 169); 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.

Exceptions to s 169

170.(1) A registered proprietor of a lot does not obtain the benefit of section 169 (Quality of registered interests) 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 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 freehold land register;
- (d) the interest of a person who, on application, would be entitled to be registered as owner of the lot because the person is an adverse possessor;
- (e) the interest of another registered proprietor making a valid claim under an earlier existing indefeasible title for all or part of the lot;

- (f) 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;
 - (g) 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 freehold land register against the lot burdened; or
 - (b) the easement was registered but later omitted by an error of the Registrar.

Action to correct wrong inclusion of a lot

171.(1) If the Registrar is satisfied that section 170(1)(g) (Exceptions to s 169) applies to an indefeasible title, the Registrar 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 1 month after the person receives written notice of the correction.

Orders by Supreme Court about fraud and competing interests

172.(1) If there has been fraud by the registered proprietor or section 170(1)(c) to (g) (Exceptions to s 169) 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—

- (a) to cancel or correct the indefeasible title or other particulars in the freehold land register; or
- (b) to cancel, correct, execute or register an instrument; or
- (c) to create a new indefeasible title; or
- (d) to issue a new instrument; or
- (e) to do anything else.

Subdivision C—Compensation for loss of title

Entitlement to compensation

173. A person is entitled to be indemnified by the State if the person is deprived of an interest in a lot or suffers loss or damage because of—

- (a) the fraud of another person; or
- (b) the incorrect creation of an indefeasible title in the name of another person; or
- (c) incorrect registration; or
- (d) an error in an indefeasible title or in the freehold land register; or
- (e) tampering with the freehold land register; or
- (f) reliance on the incorrect state of the freehold land register; or
- (g) loss, destruction or improper use of a document deposited or lodged at the land registry or held by the land registry for safe custody; or
- (h) an error in a search by the Registrar or a member of the land registry staff carried out at someone else's request; or
- (i) omission, mistake, breach of duty, negligence or misfeasance of or by the Registrar or a member of the staff in the land registry; or
- (j) the exercise by the Registrar of a power in relation to an application or dealing with which the person had no connection.

Matters for which there is no entitlement to compensation

174.(1) A person is not entitled to be indemnified by the State 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; or
- (b) if the person, a person acting as agent for the person, or an indemnified solicitor acting or purporting to act as solicitor 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 intended to create a new indefeasible title for the relevant lot; or
- (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; or
- (d) caused when the Registrar corrected an indefeasible title that mistakenly included the person's land, unless the person was deprived under section 173(f) (Entitlement to compensation); or
- (e) because of an error in the location of a lot's boundaries or in a lot's area; or
- (f) because of an error or shortage in area of a lot according to a plan lodged in the land registry; or
- (g) if the loss, damage or deprivation arises out of a matter about which the Registrar is by an Act or law, either expressly or by necessary implication, excused from inquiring.

(2) In this section—

“indemnified solicitor” means a solicitor covered by indemnity insurance (however described) under the *Queensland Law Society Act 1957*.

State's right of subrogation

175.(1) On payment of any compensation under section 173 (Entitlement to compensation), the State is subrogated to the rights of the

claimant against the person responsible for the deprivation, loss or damage under the section.

(2) If the State, in exercising its rights under subsection (1), receives an amount that is more than the amount it paid to the claimant, the State must pay the difference to the claimant after deduction of the State's costs.

PART 10—LIENS

Vendor does not have equitable lien

176. 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 for the lot.

PART 11—MISCELLANEOUS

Words and expressions used in instruments under Act

177.(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.

Protection from liability

178.(1) This section applies to the Registrar and land registry staff.

(2) A person to whom this section applies is not civilly liable for an act or omission done honestly and without negligence under this Act.

(3) If subsection (2) prevents civil liability attaching to a person, the liability attaches instead to the State.

Chief executive may approve forms

179.(1) The chief executive may approve forms for use under this Act.

(2) Copies of a form approved by the chief executive must be made available (by purchase or otherwise) to persons who request them.

(3) A form must have a heading briefly indicating the form's purpose.

(4) All forms must be numbered consecutively starting with the number '1'.

(5) All versions of a form must be numbered consecutively starting with the number '1'.

(6) The approval or availability of a form or a new version of a form must be notified in the Gazette.

(7) Subsection (6) may be complied with in either of the following ways—

(a) by publication in the Gazette of a notice of—

(i) the approval or availability of the form; and

(ii) the form's heading, number and version number; and

(iii) a place or places where copies can be obtained (by purchase or otherwise);

(b) by publication in the Gazette of the form.

(8) Failure to comply with this section does not affect the form's validity.

Reference to instrument is reference to instrument completed in appropriate form

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

References in instruments to a person with an interest in a lot includes personal representatives etc.

181.(1) In an instrument made or executed under this Act, a reference to a person as proprietor, transferor, transferee, mortgagor, mortgagee, lessor, lessee, trustee or as having an interest in a lot includes a reference to the

person's personal representatives, successors and assigns.

(2) The application of this section may be displaced, wholly or partly, by a contrary intention appearing in the instrument.

Service

182.(1) A notice required or permitted to be served on a person under this Act (a "**land title notice**") may be served on the person's agent.

(2) The Supreme Court may order that a land title notice required or permitted be served on a person under this Act be served in the way directed by the Supreme Court.

(3) The Supreme Court may make an order under subsection (2) if, for example, the person—

- (a) is not known; or
- (b) cannot be found and has no known agent; or
- (c) is dead and has no personal representative.

(4) The Supreme Court may dispense with service of a land title notice if it is satisfied that it is appropriate to dispense with service of the notice.

Delivery

183. If the Registrar is required or permitted to return an instrument or other document to a person who has deposited or lodged it in the land registry, the Registrar may return it by leaving it at a place designated for the purpose in the land registry.

Regulation making power

184.(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about the following matters—

- (a) how instruments may be lodged;
- (b) fees, to be paid in relation to—
 - (i) the lodgment and registration of instruments in the land registry; or

- (ii) the provision of other services by the Registrar;
- (c) how fees are to be paid and may be recovered, including the provision of credit facilities to persons approved by the Registrar;
- (d) the size, type and quality of paper on which a form may be printed;
- (e) the size and nature of the type to be used in both the printing and completion of a form;
- (f) the ink or other substance to be used for printing or completing a form;
- (g) additional information to be supplied with a form;
- (h) transitional arrangements if a new form is approved;
- (i) the execution of instruments;
- (j) anything else about a form or instrument.

(3) A regulation may create offences and prescribe penalties of not more than 5 penalty units for the offences.

PART 12—SAVINGS AND TRANSITIONAL

Things made under repealed Acts

185.(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 by regulation for this definition.

(2) Everything done under an Act repealed by this Act, is as effective as if it had been done under this Act.

Interests and certificates of title under repealed Acts

186.(1) On the commencement of this section—

- (a) each interest in freehold land held by a person immediately before the commencement, and recorded under an Act repealed by this Act, is taken to be an interest held by the person in the freehold land register; and
- (b) each certificate of title, duplicate certificate of title or deed of grant (other than a deed of grant prescribed by regulation) issued under an Act repealed by this Act before the commencement is taken to be a certificate of title issued under this Act.

(2) The Registrar 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 freehold land register.

Effect of repeal by this Act

187. The repeal of the following sections is limited in the following way—

- (a) section 11 of the *Real Property Act 1877* continues to apply to a lease granted before this Act commenced;
- (b) section 5 of the *Real Property Acts and Other Acts Amendment Act 1986* continues to apply to a bill of encumbrance and memorandum of transfer-and-charge registered or executed before this Act commenced;
- (c) sections 126 to 129 and section 135 of the *Real Property Act 1861* continue to apply to claims for compensation for—
 - (i) deprivation of an interest in a lot; and
 - (ii) loss or damage caused by an error, breach of duty or wrong-doing by the Registrar;that happened before this Act commenced;
- (d) section 119A of the *Real Property Act 1861* continues to apply to plans mentioned in section 94 (Registration of plan showing proposed easement) of this Act that were lodged or registered before this Act commenced.

Registration of instrument lodged before commencement of this Act**188.(1)** If—

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

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

(2) When registering an instrument under subsection (1), the Registrar must exercise the powers the Registrar had at the time when the instrument was lodged.

Reference to Registrar-General etc.

189.(1) A reference to the Registrar-General or Master of Titles in an Act or document about the registration of instruments under an Act repealed by this Act is taken to be a reference to the Registrar.

(2) Subsection (1) does not affect the application of section 14H (References taken to be included in citation of law) of the *Acts Interpretation Act 1954*.

(3) The application of subsection (1) to a reference is not displaced, wholly or partly, merely because the reference is accompanied by a reference to an Act repealed by this Act, or a provision of an Act repealed by this Act, as amended from time to time or as in force at a particular time.

References to office of Registrar of Titles

190. A reference in any Act or document to the office of the Registrar of Titles (either in those words or in words to the same effect) is taken to be a reference to the land registry.

Reference to Act repealed by this Act

191. In an Act or document, a reference to an Act repealed by this Act, or

to a group of Acts repealed by this Act (whether or not as the ‘Real Property Acts’), is taken to be a reference to this Act.

Transitional regulations

192.(1) A regulation may make provision with respect to any matter for which—

- (a) it is necessary or convenient to assist the transition from the operation of an Act or the Acts repealed by this Act to the operation of this Act; and
- (b) this Act does not, in the Governor in Council’s opinion, make provision or sufficient provision.

(2) A regulation under subsection (1) may be given retrospective operation to a date not earlier than the date of assent.

(3) This section expires 1 year after it commences.

PART 13—REPEALS AND CONSEQUENTIAL AMENDMENTS

Repeals

193. The following Acts are repealed—

Real Property Act 1861

Real Property Act 1877

Real Property Acts Amendment Act 1942

Real Property Acts Amendment Act 1952

Real Property Acts Amendment Act 1956

Real Property Acts Amendment Act 1963

Real Property Acts Amendment Act 1973

Real Property Acts Amendment Act 1974

Real Property Acts Amendment Act 1979

Real Property Act Amendment Act 1980

Real Property Act Amendment Act 1981

Real Property Acts Amendment Act 1981

Real Property Act Amendment Act 1985

Real Property Acts and Other Acts Amendment Act 1986

Real Property Acts Amendment Act 1988

Real Property Acts Amendment Act 1990

Real Property (Commonwealth Titles) Act 1924

Real Property (Commonwealth Defence Notification) Act 1929.

Amendment of Acts—Schedule 2

194. An Act mentioned in Schedule 2 is amended as specified in the Schedule.

SCHEDULE 1**WITNESSES TO INSTRUMENTS**

section 146

Place of execution of instrument	Persons who can witness execution
In a State, Territory or place outside Australia	<ul style="list-style-type: none"> • A notary public • A justice of the peace • A commissioner for declarations or for taking affidavits • A barrister • A solicitor • A barrister and solicitor • A legal practitioner • A conveyancer • Another person approved by the Registrar.
At any place outside Australia	<ul style="list-style-type: none"> • A person prescribed by regulation.

SCHEDULE 2

AMENDMENT OF ACTS

section 194

ACTS INTERPRETATION ACT 1954

1. After section 35—

insert—

‘References to person with interest in land includes personal representative etc.

‘35A. In an Act, a reference to a person as proprietor, transferor, transferee, mortgagor, mortgagee, lessor, lessee, trustee or as having an interest in land includes a reference to the person’s personal representatives, successors and assigns.’.

2. Section 36 (definitions “land registry”, “lease”, “lessee”, “lessor”, “mortgagee” and “mortgagor”—

omit.

3. Section 36—

insert—

‘ “freehold land register” means the freehold land register established under the *Land Title Act 1994*;

“land registry” means the land registry established under the *Land Title Act 1994*;

“lease” includes demise, tenancy and sub-lease, whether for a term, for a period or at will;

“lessee” includes tenant;

SCHEDULE 2 (continued)

“lessor” includes landlord;

“personal representative” of a deceased individual means the executor (whether original or by representation) or administrator of the individual’s estate;

“transfer” of an interest in land means the passing of the interest other than by transmission;

“transmission” of an interest in land means the passing of the interest because of death or under a law about bankruptcy, insolvency or the liquidation of corporations;

“will” includes codicil;’.

DISTRICT COURTS ACT 1967**1. Section 99, from ‘91 of’ to ‘and section’—**

omit.

INTEGRATED RESORT DEVELOPMENT ACT 1987**1. Section 65, definition “Real Property Acts”—**

omit.

2. Section 65, definition “proprietor”—

omit ‘registered or entitled to immediate registration under the Real Property Acts as the proprietor of that land’,

insert ‘registered, or entitled to be registered, under the *Land Title Act 1994* as the owner of the land’.

SCHEDULE 2 (continued)

3. Section 78(3)—

omit ‘entitled, otherwise than as a transferee, to be registered under the Real Property Acts as’,

insert ‘, otherwise than as a transferee,’.

4. Section 94, definition “proprietor”—

omit ‘registered or entitled to immediate registration under the Real Property Acts as the proprietor of that lot’,

insert ‘registered, or entitled to be registered, under the *Land Title Act 1994* as the owner of the land’.

5. Section 94, definition “Real Property Acts”—

omit.

6. Section 106(3)—

omit ‘entitled, otherwise than as a transferee, to be registered under the Real Property Acts as’,

insert ‘, otherwise than as a transferee,’.

LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1990**1. Section 1.4, definition “allotment”—**

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

2. Section 1.4, definition “Real Property Acts”—

omit.

SCHEDULE 2 (continued)

3. Section 1.4, definition “registering authority”, paragraphs (a) and (b)—

omit, insert—

‘(a) the Registrar of Titles; or’.

4. Section 1.4, definition “subdivision”, paragraph (c)—

omit, insert—

‘(c) the creation of an indefeasible title under the *Land Title Act 1994* for a part of the land; or’.

5. Section 5.3(7), from ‘for a purpose’ to ‘the Registrar of Titles’—

omit, insert—

‘so that it can be lodged in a different order in relation to other instruments’.

6. Section 5.11(13)—

omit.

PROPERTY LAW ACT 1974**1. Section 4, definitions “bank”, “bankrupt”, “land under the provisions of the Real Property Acts”, “nomination of trustees”, “Real Property Acts” and “will”—**

omit.

2. Section 4, definition “conveyance”—

omit ‘within the meaning of the Real Property Acts’,

insert ‘of an interest in land’.

SCHEDULE 2 (continued)

3. Section 4, definition “disposition”—

omit ‘nomination of trustees.’.

4. Section 4, definition “registered land”—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

5. Section 5(1)(b)—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

6. Section 5(1)(b)—

omit ‘those Acts’, *insert* ‘that Act’.

7. Section 30(2)—

omit, insert—

‘(2) An interest in remainder created after the commencement of this Act must not be registered in the freehold land register.

‘(2A) Subsection (2) has effect despite anything in the *Land Title Act 1994*.’.

8. Section 45(5)(b)—

omit, insert—

‘(b) how instruments are validly executed under the *Land Title Act 1994*; or’.

9. Section 46(7)—

omit, insert—

‘(7) This section does not affect how instruments are validly executed under the *Land Title Act 1994*.’.

SCHEDULE 2 (continued)

10. Section 53(4)—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

11. Section 73(3)(b)—

omit, insert—

‘(b) the *Land Title Act 1994*.’.

12. Section 74(1)—

omit, insert—

‘**74.(1)** A purchaser under an instalment contract for the sale of land registered under the *Land Title Act 1994* may, by a caveat under that Act that is expressed to be lodged under this section, forbid the registration of any instrument affecting the land the subject of the contract until completion of the instalment contract.

‘**(1A)** A caveat lodged under this section is taken, for the purposes of the *Land Title Act 1994*, to have been lodged other than under Part 7, Division 2 of that Act.’.

13. Section 74(3)—

omit ‘under section 102 of the *Real Property Act 1861*’,

insert ‘in relation to caveats under the *Land Title Act 1994*’.

14. Section 77, heading—

omit ‘and interpretation of terms’.

15. Section 77(1)(b)(i)—

omit, insert—

‘(i) the *Land Title Act 1994*; or’.

SCHEDULE 2 (continued)

16. Section 77(2)—

omit, insert—

‘Definitions

‘77A. In this Part—

“instrument of mortgage” includes—

- (a) an instrument of mortgage under the *Land Title Act 1994*; and
- (b) a memorandum of mortgage under the Land Act, the Miners’ Homestead Leases Act or the Mineral Resources Act;

“principal money” includes any annuity, rent charge or principal money secured or charged by an instrument of mortgage registered under the *Land Title Act 1994*.’.

17. After section 80(3)—

insert—

‘(3A) Subsection (3)(a) does not apply to a certificate of title or other document of title if, under the *Land Title Act 1994*, it must be cancelled and not be redelivered to the mortgagee.’.

18. Section 84(4)—

omit ‘the Real Property Acts’,

*insert ‘any 1 or more of the Acts repealed by the *Land Title Act 1994*’.*

19. Section 86(2)—

omit ‘a bill of mortgage registered under the Real Property Acts’,

*insert ‘an instrument of mortgage registered under the *Land Title Act 1994*’.*

SCHEDULE 2 (continued)

20. Section 101(4)(b)—

omit ‘section 63 of the *Real Property Act 1861*’,
insert ‘the *Land Title Act 1994*’.

21. Section 101(4)(b)—

omit ‘that section’, *insert* ‘that Act’.

22. Section 101(5)—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

23. Section 113(4)—

omit, insert—

‘(4) For a registered lease of registered land, this section is subject to the *Land Title Act 1994*.’.

24. Section 115(2)—

omit ‘Real Property Acts, including section 54 of the *Real Property Act 1861*’,

insert ‘*Land Title Act 1994*’.

25. Section 128(11)(b)—

omit, insert—

‘(b) the lessee, if the lease is of registered land and the lessee is in possession of the leased premises, has the protection given by the *Land Title Act 1994* to—

- (i) if the lessee’s interest in the lease is held by the lessee as a registered proprietor—a registered proprietor; or
- (ii) if the lease is an unregistered short lease (within the meaning

SCHEDULE 2 (continued)

of the *Land Title Act 1994*)—the interest of a lessee under a short lease.’.

26. Section 168(2)—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

27. Section 173(3)—

omit, insert—

‘(4) The power of a registered proprietor under the *Land Title Act 1994* to revoke a power of attorney is subject to this section.’.

28. Section 175—

insert—

‘(2A) This section is in addition to any other method of proof authorised by law.’.

29. Section 175(4)—

omit.

30. Section 176(2)—

omit.

31. Section 183, definition “owner”, paragraph (c)—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

32. Section 202(1)—

omit ‘Real Property Acts, under those Acts,’,

insert ‘the *Land Title Act 1994*, under that Act.’.

SCHEDULE 2 (continued)

33. Section 242(2)(b)—

omit ‘referred to in section 115 of the *Real Property Act 1861*’,
insert ‘mentioned in Schedule 1 of the *Land Title Act 1994*’.

34. After s 254, in Pt 18—

insert—

‘Continuation of Division after commencement of Land Title Act 1994

‘254A.(1) In this section—

“repealed Acts” means the *Real Property Act 1861* and the *Real Property Act 1877*.

‘(2) This Division continues to operate after the commencement of the *Land Title Act 1994* with all changes necessary to take account of enactment of that Act and any changes prescribed by regulation.

‘(3) The repealed Acts continue to apply to the extent necessary for the continued operation of this Division but subject to any changes prescribed by regulation.’.

**PUBLIC OFFICERS’ SUPERANNUATION BENEFITS
RECOVERY ACT 1988****1. Section 20(3)—**

omit ‘*Real Property Act 1861–1986*’, *insert* ‘*Land Title Act 1994*’.

2. Section 20(4)—

omit ‘*Real Property Act 1877–1988*’, *insert* ‘*Land Title Act 1994*’.

3. Section 20(4)—

omit ‘*Real Property Act 1861–1988*’, *insert* ‘that Act’.

SCHEDULE 2 (continued)

PUBLIC TRUSTEE ACT 1978**1. Section 6, definitions “Real Property Acts” and “will”—**

omit.

2. Section 6, definition “registering authority”—

omit ‘under the Real Property Acts, the Registrar of Dealings under the *Land Act 1962–1978*’.

3. Section 28(3)—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

4. Section 28(4)—

omit, insert—

‘(4) Freehold land under the *Land Title Act 1994* accepted or taken by the Public Trustee under subsection (1) may be transferred under the *Land Title Act 1994* to the Public Trustee as trustee under this section.’.

5. Section 127—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

6. Section 138(2)(a)—

omit ‘Real Property Acts’, *insert* ‘*Land Title Act 1994*’.

7. Section 138(2)(a)—

omit ‘proprietor of any estate or interest in any land under those Acts’,
insert ‘owner or proprietor of land under that Act’.

SCHEDULE 2 (continued)

**QUEENSLAND BUILDING SERVICES AUTHORITY
ACT 1991****1. Section 4, definitions “owner”, “Real Property Acts” and
“Registrar of Titles”—**

omit, insert—

“**owner**” of land means—

- (a) for freehold land—the registered owner of the land under the *Land Title Act 1994*; or
- (b) for land held under a statutory lease or licence giving a right to possession of the land—the lessee or licensee;

“**Registrar of Titles**”, for land that is not under the *Land Title Act 1994*, means the officer responsible for keeping a register for the land;’.

2. Section 46—

insert—

“(5) In this section—

“**register**” means—

- (a) for freehold land—the freehold land register; or
- (b) for other land—the relevant register for the land.’.

SOUTH BANK CORPORATION ACT 1989**1. Section 4, definitions “Real Property Acts” and “Registrar of
Titles”—**

omit.

SCHEDULE 2 (continued)

2. Section 4, definition “South Bank public land”—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

3. Section 13A(5)—

omit, insert—

‘(5) If particulars of an interest in land in the Parkland Precinct may be recorded in the freehold land register, the Corporation and the Council may transfer the interest only if the Minister has consented in writing.

‘(6) Subsection (5) does not apply to a short lease within the meaning of the *Land Title Act 1994*.’.

4. Section 14(1)—

omit, insert—

‘Recording of vesting of land

‘14.(1) The Registrar of Titles or anyone else required or permitted to record particulars necessary to identify interests in land must, on the written request of the Corporation, record the particulars of any interest in land vesting in the Corporation, or in the Corporation and the Council, under this Act.’.

5. Section 23(5)(a)—

omit, insert—

‘(a) a short lease within the meaning of the *Land Titles Act 1994* or an interest the particulars of which may not be recorded in the freehold land register; or’.

6. Section 24(1)(b)—

omit ‘proprietor’, *insert* ‘owner’.

SCHEDULE 2 (continued)

7. Section 24(3)—

omit, insert—

‘(3) On notification in the Gazette of the approval of the Governor in Council to the permanent closure of the road and on application by the Corporation to the Minister administering the *Land Act 1962*, a deed of grant must be issued in the name of the Corporation for the land consisting of the road and the Registrar of Titles must register the deed of grant.’.

8. Section 25(1), definition “land”—

omit ‘Real Property Acts’, insert ‘Land Title Act 1994’.

9. Section 25(1), definition “lot”—

omit ‘Real Property Acts’, insert ‘Land Title Act 1994’.

10. Section 25(4)—

omit ‘owner’, insert ‘registered owner’.

11. Section 25(5)(d)—

omit, insert—

‘(d) otherwise comply with the requirements of the *Land Title Act 1994*.’.

12. Section 25(6)—

omit ‘Real Property Act 1861’, insert ‘Land Title Act 1994’.

13. Section 25(11) and (12)—

omit.

SCHEDULE 2 (continued)

14. Section 25A(1)—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

15. Section 25A(2)—

omit, insert—

‘(2) The *Land Title Act 1994* applies to stratum lots in the same way as it applies to other land except to the extent that it is inconsistent with this Act or incapable of applying.’.

16. Section 25A(15)(b)—

omit ‘register’, *insert* ‘freehold land register’.

17. Section 25A(17)—

omit ‘Real Property Acts’, *insert* ‘Land Title Act 1994’.

18. Section 25A(17)(b)—

omit, insert—

‘(b) create a separate indefeasible title for each stratum lot created by the registration of the relevant plan by recording a separate set of particulars for each lot in the freehold land register; and’.

19. Section 25A(17)(c)—

omit ‘register’, *insert* ‘freehold land register’.

20. Section 25A(18)—

omit ‘Real Property Acts, taken to form part of the register’,

insert ‘Land Title Act 1994, taken to be recorded in the freehold land register’.

SCHEDULE 2 (continued)

21. Section 25B(2)(a)—

omit ‘owner’, insert ‘registered owner’.

22. Section 25F(1)—

omit ‘Real Property Acts’, insert ‘Land Title Act 1994’.

23. Section 25G(2)—

omit ‘Real Property Acts’, insert ‘Land Title Act 1994’.

24. Section 25G(2)(b)—

omit ‘proprietor’, insert ‘owner’.

25. Section 25G(12)—

omit ‘Real Property Acts’, insert ‘Land Title Act 1994’.

26. Section 25G(13)—

omit, insert—

‘(13) In creating an indefeasible title for land benefited or burdened by an easement created under this section, the Registrar of Titles must record the easement against the indefeasible title in the way the Registrar of Titles considers appropriate.’.

STAMP ACT 1894**1. Section 30(2)—**

omit, insert—

‘(2) The Registrar of Titles may accept a caveat for lodgment only if it is properly stamped or exempt from duty.’.

SCHEDULE 2 (continued)

2. Section 56FD(2)—

omit, insert—

‘(2) After the request is recorded, the Registrar of Titles may register an instrument affecting the land only if the Commissioner consents in writing to the registration of the instrument.’.

3. Section 56FG(b)—

omit ‘Real Property Act 1861–1986’, insert ‘Land Title Act 1994’.

4. Section 66A—

omit ‘Real Property Act 1861–1985 or the Real Property Act 1877–1981’,

insert ‘Land Title Act 1994’.

5. First Schedule (Caveat)—

omit ‘Real Property Act 1861–1985 or the Real Property Act 1877–1981’,

insert ‘Land Title Act 1994’.

6. First Schedule (Request)—

omit ‘Real Property Act 1861–1988 and the Real Property Act 1877–1988’,

insert ‘Land Title Act 1994’.

STATE HOUSING ACT 1945**1. Section 22(3)—**

omit.

SCHEDULE 2 (continued)

2. Section 23A(9)—

omit “*The Real Property Acts, 1861 to 1963*”,
insert ‘*the Land Title Act 1994*’.

3. Section 24A(6)(a)—

omit ‘a memorandum of transfer, correct for registration under “*The Real Property Acts, 1891 to 1960*,”’,
insert ‘an instrument of transfer capable of registration under the *Land Title Act 1994*’.

4. Section 24A(8)—

omit ‘a memorandum of transfer, correct for registration under “*The Real Property Acts, 1861 to 1960*,”’,
insert ‘an instrument of transfer capable of registration under the *Land Title Act 1994*’.

5. Section 24A(12)—

omit “*The Real Property Acts, 1861 to 1960*,”’,
insert ‘*the Land Title Act 1994*’.

6. Section 26D(3)—

omit ‘*Real Property Act 1861–1981*’, *insert* ‘*Land Title Act 1994*’.

SUGAR INDUSTRY ACT 1991**1. Section 11.7(4)—**

omit ‘*Real Property Act 1861–1990*’.
insert ‘*Land Title Act 1994*’.

SCHEDULE 2 (continued)

SUGAR MILLING RATIONALISATION ACT 1991**1. Section 23(1)—**

omit 'Real Property Act 1861 or the Land Act 1962, the Governor in Council may, by order in council,',

insert 'Land Title Act 1994 or the Land Act 1962, a regulation may'.

2. Section 23(1)(b)—

omit 'order in council', insert 'regulation'.

3. Section 23(2)—

omit 'order in council', insert 'regulation'.

4. Section 24(1)—

omit 'Real Property Act 1861 or the Land Act 1962, the Governor in Council may, by order in council,',

insert 'Land Title Act 1994 or the Land Act 1962, a regulation may'.

5. Section 24(1)—

omit 'with the order in council', insert 'with the regulation'.

6. Section 24(2)—

omit 'order in council', insert 'regulation'.

7. Section 24(4)—

omit, insert—

'(4) An easement declared under subsection (1) to be capable of registration under the *Land Title Act 1994* or the *Land Act 1962* may be

SCHEDULE 2 (continued)

registered under section 25.’.

8. Section 25(2)—

omit ‘the form prescribed by the *Real Property Act 1861*’,
insert ‘the appropriate form under the *Land Title Act 1994*’.

9. Section 25(3)—

omit.

10. Section 25(4)(b) and (c)—

omit, insert—

‘(b) any other documentation required by the Registrar of Titles;’.

11. Section 25(5)—

omit ‘The instrument of title for the land concerned is not’,
insert ‘No instrument of title for the land concerned is’.

12. Section 25(6)—

omit.

13. Section 26, heading—

omit, insert—

‘Details in regulation’.

14. Section 26—

omit ‘An order in council’, *insert* ‘A regulation’.

SCHEDULE 2 (continued)

TRUSTEE COMPANIES ACT 1968

1. Section 4, definitions “bank” and “will”—

omit.

2. Sections 17, 18 and 19, from ‘including in’ to ‘those Acts’—

omit, insert—

‘(including the right to be registered under the *Land Title Act 1994* as personal representative)’.

3. Section 39(2), from ‘under the’ to ‘those Acts’—

omit, insert—

‘under the *Land Title Act 1994*, or of recording the trustee company as owner or proprietor of land under that Act’.

TRUSTS ACT 1973

1. Section 5, definitions “bank”, “Local Authority”, “Minister” and “property”—

omit.

2. Section 5, definition “Registrar”—

omit ‘appointed under The Registrar of Titles Act of 1884’.

3. Section 11(5)—

omit.

SCHEDULE 2 (continued)

4. Section 33(5)—

omit ‘Real Property Act 1861–1972’, insert ‘Land Title Act 1994’.

5. Section 56(9)—

omit.

6. Section 113(1)—

omit ‘Real Property Act 1861–1978’, insert ‘Land Title Act 1994’.