

LAND TITLE BILL 1994

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The Bill provides for the consolidation and reform of the law about the registration of freehold land, and interests in freehold land, and for other purposes.

The legislation provides a legislative basis for the introduction of the automated titling system.

The Reasons for the Bill

There are a myriad of Real Property Acts which cover various aspects of real property. These Acts have had the prime function of establishing and maintaining a Torrens System of title registration in this State to record interests in freehold land using a paper based register. The need for improved registration and recording procedures and improved technology levels have meant that the paper register has become outdated and cumbersome and needs to be replaced with an electronic based register. In addition, it is necessary to consolidate all the various pieces of legislation into one concise plain English Bill.

Estimated Cost for Government Implementation

There will be minimal costs incurred by the Government in introducing this legislation. Such costs will be recoverable very quickly.

Consultation

The Queensland Law Reform Commission released Report No 40 in 1991 on the Consolidation of the Real Property Act. The Report's draft bill was widely circulated and was the result of considerable consultation with

interested bodies and the community. The present Bill is based largely on the Law Reform Commission's draft bill.

The Law Reform Commission was consulted during the drafting of the Bill and most of that body's suggested amendments have been incorporated into this Bill.

The Litigation Reform Commission also gave its comments on the Bill and similarly its comments and suggested amendments have been considered and incorporated.

NOTES ON PROVISIONS

PART 1 — PRELIMINARY

Clause 1 contains the short title.

Clause 2. The Bill will commence on a date to fixed by Proclamation.

Clause 3. The clause sets out the objects of the Bill which are 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 of 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 help keep the Land Registers in the Land Registry, particularly by using computer technology.

Clause 4. Most terms used in the Bill are defined in this clause. Other particular terms are defined in other parts of the Bill.

Clause 5. The Bill binds all persons including the State and as far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

PART 2 — ADMINISTRATION

Division 1 — General

Clause 6.(1) provides for the statutory position of the Registrar of Titles.

Clause 6.(2) provides for the Seal of Office of the Registrar.

Clause 6.(3). The Registrar is appointed under the Public Service Management and Employment Act 1988.

Clause 6.(4). Judicial notice must be taken of the signature or the imprint of the seal of the Registrar on a document.

Clause 6.(5). The Registrar is subject to the Chief Executive but not to any other officer or employee of the Department.

Clauses 7.(1) and 7.(2). The Chief Executive is to keep a land registry which consists of a freehold land register, all other registers kept by the Registrar under an Act, registers prescribed by regulation and any other compilations prescribed by regulation in which information about land is recorded.

Clause 7.(3) provides that a regulation may prescribe the location of offices of the land registry and the documents which may be lodged in those offices.

Clause 8 provides that the freehold land register may be kept in a manner the Registrar considers appropriate, including a non-documentary form.

Clause 9 provides that the Registrar may delegate his powers to an officer or employee of the Department.

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

Clauses 10.(1) and 10.(2) provide for the form of instruments to be lodged including their form when executed.

Clause 10.(3). The clause gives a discretion to the Registrar to register an instrument that is not in the appropriate form.

Clause 11. This provision requires an instrument, to transfer or create an interest in land, to be executed by the person who is transferring the interest

or in whose favour it is created or for the solicitor of either of those persons. The exception to this execution requirement is a total or partial discharge of a mortgage which need only be executed by the mortgagee.

Clause 12. Where a consent of a person is necessary for the sale or other dealing with land, a consent must either be endorsed on the instrument or produced with the relevant instrument at the time of its lodgment.

Clause 13 provides that an instrument must be lodged in the required number of executed copies otherwise it may not be registered.

Clauses 14.(1) and 14.(2) allows the Registrar to authorise persons to print and sell appropriate forms, other than a certificate of title.

Clause 14.(3) provides that a person must not sell an appropriate form unless authorised. There is a penalty of 50 penalty units for a breach of the provision.

Clause 14.(4). Under the clause a person who knowingly uses an inappropriate form is also subject to a penalty of 20 penalty units.

Clause 14.(5). The knowing use of an unauthorised form also attracts a penalty of 20 penalty units.

Division 3 — Powers of the Registrar

Clause 15. Under clause 15.(1) the Registrar may amend or correct the freehold land register on receiving of appropriate information or evidence and provided the Registrar is satisfied that the amendment will not prejudice the rights of the holder of a registered interest.

Clause 15.(2) sets out inclusions to the general power to correct.

Clause 15.(3). The Registrar must record any amendments or corrections he makes in the register including the state of the register before the amendment or correction took place, and the time, date and circumstances of the amendment or correction.

Clause 15.(4) is important as it provides that the correction of the register has the same effect as if the error had not been made.

Clause 16 allows the Registrar to simplify descriptions of parcels of land to a lot-on-plan description.

Clause 17. The clause allows the Registrar, in particular circumstances, to prepare and register a caveat to prevent a dealing with a lot where that lot, in the Registrar's opinion, belongs to the State, a minor or a person who is intellectually impaired, or who is absent from the State.

Clauses 18.(1) to 18.(4) provide that the Registrar may require public notice to be given in the cases of a request to register a person as an adverse possessor, register a transmission of a registered interest, issue substitute instruments and dispense with the production of an instrument.

Clause 18.(5) requires the applicant to satisfy the Registrar that public notice has been given as required.

Division 4 — Inquiries

Clause 19. This clause sets out instances in which the Registrar may decide to hold an inquiry.

Clause 20. The duties of the Registrar in conducting an inquiry are set out on the clause.

Clause 21. This clause empowers the Registrar to decide the procedures to be adopted in an inquiry.

Clause 22. The powers of the Registrar in conducting the inquiry are contained in this clause.

Clause 23.(1). Where an inquiry is conducted, the Clause provides for the Registrar to give written notice to persons requiring them to attend at the inquiry at specified times and places.

Clause 23.(2) provides for persons to be entitled to reasonable witness fees for attendance at an inquiry.

Clause 24.(1) creates an offence provision for a witness to fail to attend an inquiry without reasonable notice or excuse. There is a maximum penalty of 35 penalty units for the offence.

Clause 24.(2) extends the offences provision, by detailing what a witness must not do when appearing in an inquiry. There is a maximum penalty of 35 penalty units for a breach of the provision.

Clause 24.(3) allows the witness the reasonable excuse of failing to answer a question on the grounds that answering the question may tend to incriminate the witness.

Division 5 — Registrar may refer matters to the Supreme Court

Clause 25.(1) in relation to an inquiry, allows the Registrar to apply to the Supreme Court for an order to compel a person to comply with a notice or requirement in relation to the inquiry.

Clause 25.(2). The Court may make such orders which considered necessary to assist the Registrar in the conduct of the inquiry.

Clause 26. This provision allows the Registrar to apply to the Court for directions and also to state a case for decision by the Court.

PART 3 — FREEHOLD LAND REGISTER***Division 1 — General***

Clause 27. The Registrar must keep a register of freehold land.

Clause 28. This clause details the particulars which the Registrar must record in the freehold land register. The particulars include every lot bought under the Act, i.e. all lots alienated from the Crown.

Clause 29 provides the particulars the Registrar may record in the freehold land register as well as such other particulars necessary to ensure the register is an accurate record of freehold land.

Clause 30. The clause provides that the Registrar must register an instrument if the Act has been complied with, unless, of course, the instrument has been withdrawn by the person who lodged it.

Clause 31 is self explanatory.

Clause 32. In the registration process, the Registrar must allocate a distinguishing reference to an instrument affecting a lot and record that reference in the freehold land register.

Clause 33 provides for part of the freehold land register to contain registered powers of attorney.

Clause 34. This clause allows the Registrar to keep separate from the freehold land register other information necessary for the effective operation of the register, for example, administrative advices which list references to such matters as contaminated land sites, heritage listings etc.

Clause 35. The provision sets out the entitlement to search the land title register. A person may, under the provision, search the indefeasible title and obtain copies or certified copies of the indefeasible title, and registered instruments.

Clause 36. This provision details the evidentiary effect of certified copies of documents obtained through search.

Division 2 — Indefeasible Title

Clause 37 provides that an indefeasible title for a lot is created on the recording of the particulars of the lot in the freehold land register.

Clause 38. An indefeasible title of a lot is defined by the clause to be the current particulars about the lot in the freehold land register.

Clauses 39.(1) and 39.(2) allow the Registrar, where special circumstances exist, to create a single indefeasible title for two or more lots that are owned by the same person.

Clause 39.(3) allows the Registrar's discretion under the clause to be applied also in the case of lots sharing a common boundary of a road or watercourse.

Clause 40 provides the mechanism for creating separate indefeasible titles for 2 or more lots from a single indefeasible title .

Clause 41. This clause allows the Registrar, where a transfer of part of an indefeasible title is registered, to create an indefeasible title for the land transferred and an indefeasible title for the land remaining.

Division 3 — Certificates of Title

Clause 42.(1) provides for the issue of a certificate of title. The certificate contains the indefeasible title for a lot.

Clause 42.(2) states that the certificate of title will not be issued where it is subject to a registered mortgage.

Clause 42.(3) provides that where two or more instruments have been lodged, the Registrar will not issue indefeasible titles until all the instruments have registered. This will minimise the creation of unnecessary

indefeasible titles resulting from the registration of a related series of dealings in respect of a lot.

Clause 42.(4) provides for the means of delivery of the certificate to a registered owner.

Clause 43 provides that the certificate must be an accurate statement of the particulars in the indefeasible title and be certified by the Registrar to that effect.

Clause 44. The freehold land register is endorsed with the fact that a certificate of title has been issued and a second certificate of title will only be issued if the first is returned and cancelled.

Clause 45. This clause provides that a certificate of title is cancelled whenever it is deposited in the freehold land registry. It not necessary that it be marked cancelled.

Clause 46. Under this clause a certificate of title is conclusive evidence of particulars it contains at the time of its issue. Particular note should be taken of the exceptions referred to in the clause.

PART 4 — REGISTRATION OF LAND

Division 1 — Alienation of State land

Clause 47.(1). The registration of the deed of grant, issued on the alienation of fee simple land from the State, is provided for in this clause.

Division 2 — Land held by State

Clause 48 allows the State to acquire, hold or deal with a lots.

Division 3 — Subdividing Lots

Clause 49 is self explanatory.

Clause 50 details the requirements for a plan of subdivision.

Clause 51 provides for the dedication of roads, parks, reserves etc to public use. The clause also allows for a reservation of land to the registered owner below the dedicated land. Of particular note is the fact that the clause

provides for the vesting of dedicated land in the State on registration of the plan.

Clause 52 is self explanatory.

Clause 53 deals with the question of priority where a lodged plan is withdrawn and relodged.

Clause 54. This clause generally provides for the situation where a lot which contains an exclusion for a road or watercourse is later subdivided. The provision deals with the creation of indefeasible titles in relation to the lots created by the subdivision in such an instance.

PART 5 — JOINT HOLDERS IN A LOT

Clause 55. The clause gives the Registrar a discretion as to the manner in which life interests and remainder interests are recorded.

Clause 56. This clause dealing with the recording of co-owners is self explanatory.

Clause 57 provides for the creating of separate indefeasible titles where tenants in common are the registered owners of a lot.

Clause 58 caters for the recording of the interests of participants in time share schemes.

Clause 59. This clause allows for the unilateral severing of a joint tenancy by a joint tenant through the registration of a transfer.

PART 6 — DEALINGS DIRECTLY AFFECTING LOTS

Division 1 — Transfers

Clause 60. This clause is self explanatory.

Clause 61. The requirements of an instrument of transfer are dealt with in this clause.

Clause 62. This clause deals with the effect of the registration of transfers generally, as well as specific types of transfers, e.g. transfer of a registered mortgage, or transfer of a registered lease.

Clause 63.(1). This clause deals specifically with the transfer of a mortgaged lot.

Clause 63.(2) deals with the transfer of a mortgaged lot to the mortgagee of the lot.

Division 2 — Leases

Clause 64. This clause is self explanatory.

Clause 65.(1). This clause sets out the requirements for an instrument of lease.

Clause 65.(2) specifically allows the use of a sketch plan, drawn to a standard required by the Registrar, or a plan of survey to be used to identify the leased area.

Clause 65.(3) extends a discretion to the Registrar to allow an alternative means of identifying the area to be leased. This provision may, for example, apply in the instance where the whole of the land was to be leased and was already identifiable in a registered plan.

Clause 65.(4) provides that the section does not limit the matters required to be included in an instrument of transfer.

Clause 66. This clause is self explanatory.

Clause 67.(2) allows for the amending of a lease by registering the instrument of amendment.

Clause 67.(3) is important as it clearly specifies the provisions of the lease which must not be amended. An instrument of amendment also must not be lodged after the term of the lease has ended.

Clause 68. This clause deals with re-entry by the lessor.

Clauses 69.(1) to 69.(4). Provide for the surrendering of the lease and the effect of the registration of the instrument of surrender.

Clause 69.(5) details an exception to the general provision for surrender.

Clause 70. This clause is self explanatory. The provisions of the clause applies not only where a person is bankrupt under the Bankruptcy Act 1966 but also where a company liquidator disclaims under the Corporations Law.

Clause 71. This clause allows an unregistered long-term lease to be valid at law. To obtain the protection of indefeasibility however, the long-term lease must still be registered.

Division 3 — Mortgages

Clause 72. This clause is self explanatory.

Clause 73 details the requirements of an instrument of mortgage.

Clause 74 is self explanatory.

Clause 75 is self explanatory.

Clause 76 provides for the amending of mortgage.

Clause 76.(2) details the aspects of the mortgage which may not be amended. The Clause provides additional powers to those spelt out in the Property Law Act 1974.

Clause 77. The clause allows changes in priority of registered mortgages where the mortgagees execute, between themselves, and register an instrument amending the order of priority. The effect of registration of the instrument is also provided for.

Clause 78 details the powers of a mortgagee where a mortgagor defaults under a registered mortgage. These powers complement the provisions of the Property Law Act 1974 and of course are in addition to any power which is exercisable by the mortgagee under the mortgage.

Clause 79. This provision specifically provides for the effect of a transfer after sale by a mortgagee.

Clause 80. The clause details liability of a mortgagee in possession of under a lease. The limit of that liability is defined.

Clause 81. The provision deals with the release or partial release of a registered mortgage.

Division 4 — Easements

Subdivision A — General

Clause 82 provides for an easement to be created by registering an instrument of easement.

Clause 83. The clause sets out the particulars to be recorded in the freehold land register on registration of the instrument of easement.

Clause 84. This clause is self explanatory.

Clause 85. This clause allows for an easement to be registered even though it affects land that is not registered.

Clause 86. This clause deals with an easement which both benefits and burdens land owned by the same registered owner or when the owner of any lot benefited by an easement acquires an interest in the lot burdened.

Clause 87. This clause provides for the manner in which an easement may be extinguished when the same person is the registered owner of both the lot benefited and the lot burdened by the easement.

Clause 88. This clause is self explanatory.

Clause 89. This clause allows for, what are commonly termed, “easements in gross” to be registered in favour of “public utility providers”. This latter term is defined in the clause.

Clause 90. The clause set out the method of surrendering an easement. The provision includes an allowance for the registered owner of a lot benefited by the easement to unilaterally surrender the benefit of the easement. If the registered owner takes such a step the only way to reinstate the easement is to take a fresh easement. In such an instance the provisions for creating an easement will apply.

Clause 91. This clause provides for the amendment of an easement.

Clause 92. This clause is self explanatory.

Subdivision B—Creation of easements by registration of plans

Clause 93. This clause is self explanatory.

Clause 94. The clause deals with the registration of a plan which shows a proposed easement. The incorporation of the words “proposed easement” on the plan does not create the easement nor evidence of an intention to create it.

Clause 95. This clause deals with the specific creation of an easement by a plan of subdivision.

Clause 95.(1). The clause requires that the plan of subdivision creating an easement must show the nature and location of the easement and must be accompanied by an instrument of easement which is also to be registered.

Clause 95.(2) This clause details the requirements of the instrument of easement.

Clause 95.(3) This clause provides an exception to clause 95.(2).

Clause 96.(1) The clause details the limitations on the creation of easements under the Subdivision.

Clause 96.(2) lists the types of easements which may be created under the Subdivision.

Clause 97. The clause sets out the rights created on registration of the plan and the instrument of easement.

Clause 97.(1) provides for the vesting of those benefits created by registration in the person entitled to them on registration of the plan.

Clause 97.(2) This clause deals with the contributions to the cost of maintaining the easement.

Division 5 — Application by adverse possessor

Clause 98. This clause specifically excludes encroachments, as defined under the Property Law Act 1974, from being the subject of an adverse possession application.

Clause 99. The clause provides that a person may lodge an application for adverse possession. The clause also details what must accompany the application. A person who may make an application includes a person under clause 137.

Clause 100. This clause provides for the withdrawal of an application.

Clause 101. The clause allows a personal representative to bring an application in a deceased person's name where the person who, but for his death, would have been entitled to apply under the Division. In addition a personal representative may continue an application in the deceased person's name where that deceased person died before the application was completed.

Clause 102. The clause allows the Registrar to refuse to register an application if the Registrar is not satisfied the information and documents support and establish the adverse possession.

Clause 103. This clause requires the Registrar to notify generally of his intention to register an adverse possessor as owner of the land as well as specifying a time within which a caveat must be lodged by a person seeking to prevent the registration of the application.

Clause 104. Any person claiming an interest in the lot claimed by the adverse possessor may dispute the interest claimed in the application by lodging a caveat prior to registration of the application.

Clause 105. This clause allows the Registrar to lapse the caveat if he is not satisfied that the caveator has an interest in land or that the time had expired under the Limitation of Actions Act 1974 in which the caveator had to bring an action to recover the land. The Registrar must give notice to the caveator requiring that person to commence action in the Supreme Court to protect his interest within six months of the Registrar's notice. A caveat lapses in the circumstances set out in the clause.

Clause 106 provides that only leave of the Supreme Court may revive or replace the caveat that has lapsed or been withdrawn or cancelled.

Clause 107. This clause covers the refusing or compromising of the application by the Registrar. The Registrar, if satisfied that a caveator has an unextinguished interest, may refuse the application by the adverse possessor or if the caveator consents, register the adverse possessor as the holder of a lesser interest in the land that the Registrar considers appropriate, e.g. as a lessee.

Clauses 107.(2) to 107.(4) provide for the caveator to bring an action in the Supreme Court within the time limit imposed, on receiving a notice of the Registrar's intention to register the application as proprietor of a lesser interest.

Clause 108.(1) provides that, if satisfied that the applicant is an adverse possessor, the Registrar may register that person as the registered owner. The Registrar may only register that person if no caveat has been lodged or the caveat has been lapsed or not revived.

Clause 108.(2) provides the mechanism for registration of the successful applicant.

Division 6 — Trusts, deceased estates and bankruptcy

Clause 109. The clause is self explanatory.

Clauses 110.(1) and 110.(2) are self explanatory.

Clause 110.(3) requires the documents setting out details of the trust or the document creating the trust to be deposited with the instrument of transfer.

Clauses 110.(4) and 110.(5) state that those documents deposited do not form part of the freehold land register and allows the return of the documents on request once the Registrar has a certified copy of the document.

Clause 111 provides for an application to be made by a person to be registered as personal representative of a deceased registered proprietor. This Clause also prescribes the circumstances under which the Registrar may register an application as well as dealing with aspects of the accountability of the personal representative.

Clause 112. The clause sets out the entitlement of a person beneficially entitled under a Will to lodge an application to be registered as a registered owner with the personal representative's consent. The applicant must satisfy the Registrar of his beneficial entitlement.

Clause 113. This clause provides that an application under clauses 111 or 112 must state certain particulars.

Clauses 114.(1) and 114.(2) give the Supreme Court jurisdiction in this Division in respect of claims made under trusts or in cases of land owned by deceased proprietors. In exercising its powers under this section the Court has the power to order a particular person to be registered as proprietor, a person to be removed as a proprietor, or a caveat to be lodged to protect a person's interest, a person to advertise in a specified manner, or that costs be paid by any person.

Clause 114.(3) This clause provides for the orders which the Court may make.

Clause 114.(4) provides that the Registrar must register particulars of the order where he is requested to do so and an office copy of the order is produced.

Clause 114.(5) This clause is important as it provides that the order does not vest an interest in a lot until the order is registered.

Clause 115 provides for a transmission in bankruptcy.

PART 7 — OTHER DEALINGS

Division 1 — Writs of execution

Clause 116. The clause provides for the circumstances in which the Registrar may register a writ of execution.

Clause 117. This clause deals with the effect of the registration of a writ of execution. Under the clause, a writ has no effect until registered and does not affect registered lots if it is not executed within 6 months of the date of its lodgement or within such extended time as allowed by the Court.

Clause 118 provides for the cancellation of registration of a writ.

Clause 119 is self explanatory.

Clause 120.(1) deals with the transfer of land sold in execution of a writ of execution.

Clause 120.(2) is important. The clause provides that a transferee, on registration of a transfer executed by the relevant court officer of the appropriate court, becomes the registered owner subject to current registered interests and equitable mortgagees notified by caveat lodged before the registration of writ of execution.

Division 2 — Caveats

Clause 121. This clause is self explanatory.

Clause 122. This clause provides for the persons who may lodge a caveat.

Clause 123 is self explanatory.

Clause 124.(1) details the effect of lodging a caveat.

Clause 124.(2) details the instruments and interests not affected by the lodging of a caveat.

Clauses 124.(3) and 124.(4) provides that the additional exceptions in clause 124(2) do not apply to a Registrar's caveat or a registered owner's caveat.

Clause 125. The clause is self-explanatory.

Clause 126.(1) provides for the lapsing of a caveat.

Clauses 126.(2) and 126.(3) deal with the serving of notices by the caveatee on a caveator.

Clause 126.(4) requires a caveator to commence proceedings in the Supreme Court to establish the claim under the caveat within certain times if the caveat is not to lapse.

Clauses 126.(5) and 126.(6) are self explanatory.

Clause 126.(7) allows the Registrar to remove a lapsed caveat from the freehold land register.

Clause 127 is self explanatory.

Clause 128.(1) This clause allows the Registrar to cancel a caveat when requested to do so provided certain conditions have been met.

Clause 128.(2) requires the Registrar to give 7 days notice before cancelling a caveat.

Clause 128.(3) is self explanatory.

Clause 129. This provision allows the Supreme Court to extend a caveat on the same grounds or substantially the same grounds as relied on in a previous caveat which has either lapsed, been withdrawn, cancelled or been removed.

Clause 130.(1) allows for compensation to be paid where a caveat is lodged or continues without reasonable cause.

Clause 130.(2) allows the Supreme Court to include a component for exemplary damages in a judgment for compensation.

Clause 130.(3). Under the clause, in an action for compensation, the onus of proving that the caveat was not lodged or continued without reasonable cause is placed on the person who lodged the caveat.

Clauses 131.(1) and 131.(2) These clause deal with notices to caveators and the service of those notices under this division. A discretion is given to the Registrar as to the manner in which notice is given notice to a caveator.

Clauses 131.(3) and 131.(4) deal with the change of name and address of a caveator and the noting of those changes on the caveat.

Division 3 — Powers of attorney and disabilities

This Division is concerned with registration of a power of attorney and the benefits flowing from its registration.

Clause 132. This clause is self explanatory.

Clause 133. This clause provides for the registering of a power of attorney in the power of attorney register. The original instrument of attorney is returned to the person who produced it for registration.

Clause 134. This clause details the effect of registering a power of attorney. This clause is self explanatory.

Clause 135. The clause allows for the registration of an instrument of revocation or a disclaimer of a power of attorney.

Clause 136 allows the Supreme Court to authorise another person to act for a registered proprietor under a disability in particular circumstances.

Clause 137 deals with the acts done by attorneys and others.

PART 8 — INSTRUMENTS

Division 1 — General

Clause 138. The clause states when an instrument is capable of registration.

Clause 139.(1). This clause provides that an instrument may not be registered until any certificate of title which relates to the instrument is returned for cancellation.

Clause 139.(2) provides the exceptions to the requirement to produce a certificate of title.

Clause 140. The clause deals with the correction of unregistered instruments by the Registrar where there is a patent or obvious error in the instrument. The power under this clause may not be used by the Registrar

unless he is satisfied that the correction will not prejudice the rights of a person.

Clause 141.(1) details the Registrar's powers to requisition instruments for re-execution or correction. In addition it allows the Registrar to require the production of information or other documents in support of an application.

Clause 141.(2) provides for additional information to be verified by statutory declaration or affidavit.

Clause 141.(3) provides the time limit within which the requisition must be complied with.

Clause 141.(4) allows for an extension of time within which to comply with the requisition.

Clause 141.(5) allows the Registrar to refuse to deal with an instrument until a requisition is complied with.

Clause 142.(1) provides for the rejection of instruments when the requisition has not been complied with within the time specified or extended.

Clause 142.(2) deals with the effect of rejection.

Clause 142.(3) provides for the noting of the rejection on the rejected instrument or in a separate record in the land registry.

Clause 142 (4) allows the re-lodgement of a rejected instrument provided the requisition has been complied with.

Clause 143.(1). The clause lists the persons permitted to borrow a lodged instrument before the instrument is registered.

Clause 143.(2) provides that the instrument being borrowed must be returned within the time determined by the Registrar.

Clause 143.(3) provides for a penalty of 50 penalty units for failure to comply with a demand for the return of the instrument.

Clause 144. This clause deals with the withdrawing of lodged instruments before registration.

Clause 144.(1) gives the Registrar a discretion, in the case of instruments which have been lodged in an incorrect sequence or which should not have

been lodged, for him to withdraw the instrument or to permit it to be withdrawn.

Clause 144.(2) is self explanatory.

Clauses 144.(3) and 144.(4) give the Registrar power to re-lodge instruments.

Clause 144.(5) provides that an instrument which is withdrawn loses its priority. The clause further provides that apart from the exception in clause 144.(5), the time of re-lodgement is the time and date endorsed by the Registrar.

Clause 144.(6) contains the exception for re-lodgement relating to plans of subdivision under clause 53

Clause 145 is self explanatory.

Clause 146. This clause, which is self explanatory, deals with the execution and proof of instruments. An instrument is validly executed if witnessed by a person mentioned in Schedule 1.

Clause 147. This clause details the obligations of witnesses for individuals executing instruments. The high onus placed on the witness is clearly demonstrated by the clause.

Clause 148. The Clause deals with the replacement of a lost instrument with a substitute instrument.

Clause 148.(1) allows the Registrar, if satisfied that a registered instrument has been lost or destroyed, to issue a substitute instrument.

Clause 148.(2) details the endorsements the Registrar must place on the substitute instrument.

Clause 148.(3) is of particular importance as it deals with the effect of the issuing of the substitute instrument. The substitute instrument becomes the registered instrument in place of the original instrument and the substitute instrument retains the priority to which the original instrument was entitled.

Clause 148.(4) provides that the Registrar must record in the freehold land register the fact of the issue of the substitute instrument and the date on which it was issued.

Clause 149.(1) allows the Registrar to dispense with the production of an instrument.

Clause 149.(2) provides that the Registrar requires evidence to allow the dispensation.

Clause 149.(3) provides that the Registrar must record the fact that the instrument has been dispensed with and the date of production was dispensed with.

Clause 150.(1). The clause allows the Registrar to require a registered proprietor of land wishing to transfer, lease or subdivide or deal with any part or the whole of the land to lodge plan of survey. This requirement is usually exercised when a lot or part of a lot is insufficiently described for the purposes of the Bill.

Clause 150.(2) sets out the compliance requirements of such a plan of survey.

Clauses 151.(1) and 151(2) allow the Registrar to destroy parts of the freehold land register or instruments held in the land registry in particular circumstances. Before its destruction the instrument must be copied in an appropriate manner determined by the Registrar.

Clause 151.(3) is of particular importance as it prevents the Registrar from destroying an original will.

Clause 151.(4) allows the Registrar to return a cancelled deed of grant or certificate of title required for historical or personal reasons.

Clause 151.(5) is also of importance as it requires the Registrar to exercise his power of destroying documents in the land registry strictly in accordance with the provisions of the *Libraries and Archives Act 1988*.

Clause 152 imposes on the person who is transferring or creating an interest in land a duty to perform the obligation set out in the transfer or other instrument creating the interest.

Division 2 — Documents forming part of instruments

The Division allows for the registration of a document containing standard covenants, conditions or terms which on the registration of a later document maybe incorporated into that document by reference. The advantage of this procedure is the standardisation of conditions of mortgages and leases.

Clause 153 is a definition clause.

Clause 154. The clause allows the Registrar or any person to lodge a document or amend a document by lodging a further document. The document is given a distinguishing reference and registered.

Clause 155 provides for the incorporation of the document into an instrument by reference.

Clause 156 allows an instrument to include provisions other than those incorporated by reference to the document. Where there is a conflict between the document and the covenants and conditions in an instrument which incorporates the document, the provisions of the instrument prevail.

Clause 157 allows the Registrar to withdraw a document registered under this clause if requested to do so, provided the Registrar advertises his intention to do so. The clause also provides that the withdrawal or cancellation of a document does not affect an instrument already in a registered or one that is executed within seven days of the withdrawal or cancellation of the registered document.

PART 9 — REGISTRATION OF INSTRUMENTS AND ITS EFFECT

Division 1 — Registration of instruments

Clause 158. An instrument is registered into the freehold land register by recording the particulars necessary to identify it.

Clause 159. An instrument under this clause is registered as soon as the particulars are recorded in the Register.

Clause 160 is self explanatory

Clause 161. This clause provides that on registration an instrument operates as a deed.

Clause 162. This clause provides for the order of registration of instruments by stating that instruments must be registered in the order in which they are lodged. It applies where a series of instruments are lodged in relation to a lot. This clause is subject, of course, to the withdrawal provisions of clause 144.

Clause 163. The priority of registered instruments is dealt with in this clause.

Clause 164.(1) provides that registered instruments have priority according to the date and time when an instrument is lodged and not according to the date and time when it was executed.

Clause 163.(2) provides that an instrument is taken to be lodged on a date and time endorsed on the instrument by the Registrar unless the contrary is proved.

Clause 163.(3) is an important rider to the clause as it provides that the priority is not affected by actual implied or constructive notice.

Clause 164 deals with the evidentiary effect of recording particulars in the freehold land register. The clause is self explanatory.

DIVISION 2 — CONSEQUENCES OF REGISTRATION

Subdivision A — General

Clause 165. This provision deals with the effect of registration by providing that the benefits of the division apply whether or not valuable consideration has been given.

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

Clause 167. The clause spells out the effect of registration on the interest by stating that on registration the interest is transferred or created in accordance with the instrument, is registered, and vests in the person identified in the instrument of the person entitled to the interest.

Clause 168. This clause provides that a person to whom an interest is to be transferred or in whom the interest has been created has the right to have the interest registered provided the instrument is executed and the person lodges any documents required by the Registrar to effect registration of the instrument and the person has complied with the Bill.

Subdivision B — Indefeasibility

Clause 169. The clause describes the quality of registered interests.

Clause 170.(1) provides the exceptions to clause 169.

Clause 171. This clause sets out the action which the Registrar must take to correct an indefeasible title if the exception in clause 170.(1)(g) applies.

Clause 172. This clause provides for the role to be taken by the Supreme Court, and the orders the Court may make, where fraud and competing interests occur.

Subdivision C — Compensation for loss of title

Clause 173. The clause provides for a person to be indemnified by the State if that person is deprived of an interest in the land or suffers loss or damage because of the circumstances set out in the clause.

Clause 174. This clause details the instances where there is no entitlement for compensation. This covers, for example, breach of trust or where the person or agent acting for the person or an indemnified solicitor acting or purporting to act for the person caused or contributed to the deprivation by fraud, neglect or deceit.

Clause 175 deals with the State's right of subrogation.

PART 10 — LIENS

Clause 176. This clause is a general statement that the vendor of the land does not have an equitable lien of the land because of the purchaser's failure to pay all or part of the purchase price of the land.

PART 11 — MISCELLANEOUS

Clause 177.(1) The clause provides for words and expressions used in instruments under this Bill.

Clause 177.(2) provides for the displacement of that meaning by contrary intention appearing in the instrument.

Clause 178. This clause deals with the liability of the Registrar and the staff in the Land Registry.

Clause 179. This clause allows the Chief Executive to approve forms for use under this Bill.

Clause 180. This clause states that a reference to a particular type of instrument is a reference to the instrument completed in the appropriate form.

Clause 181.(1) provides for references in instruments to a person to include a personal representative.

Clause 181.(2) allows for the contrary intention appearing in an instrument to give a different meaning to the term.

Clauses 182.(1) provides for notices required to be served under the Act may be served on the agent of the person.

Clauses 182.(2) and 182.(3) allow the Court to order substituted service in particular instances.

Clause 182.(4) also allows the Court to dispense with service if satisfied that it is appropriate to do so.

Clause 183D. This clause provides for the delivery by the Registrar where he is required to return documents produced in the Land Registry in relation to land registration of instruments. The clause provides the Registrar may return an instrument by leaving it at a place designed for that purpose in the Land Registry.

Clause 184 is the regulation making power.

PART 12 — SAVINGS AND TRANSITIONAL

Clauses 185 to 192 contain the savings and transitional provisions of the Bill. The Part deals with, among other matters, interests and certificates of title under the repealed Acts, the effect of the repeal of those Acts, the registration of instruments lodged prior to the commencement of this Bill and references to the Registrar-General and the office of the Registrar of Titles.

PART 13-REPEALS AND CONSEQUENTIAL AMENDMENTS

Clause 193 deals with the Acts to be repealed by this Bill.

Clause 194 provides for the Acts referred to in Schedule 2 to be amended as specified in the Schedule.

.Schedule 1 deals with the witnesses to instruments under clause 146.

.Schedule 2 deals with the amendment of Acts under 194.