Queensland

LAND TITLE ACT 1994

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Information about this reprint

This Act is reprinted as at 28 November 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

Queensland

LAND TITLE ACT 1994

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LAND TITLE ACT 1994

[as amended by all amendments that commenced on or before 28 November 2000]

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

PART 1—PRELIMINARY

Short title

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

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—the dictionary

4. A dictionary in schedule 2 defines particular words used in this Act.

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 to be employed under the *Public Service Act 1996*.

(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 kept by the registrar 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 transferor or the person creating the interest; and

(b) the transferee or the person in whose favour the interest is to be created or a solicitor authorised by the transferee or 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 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 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

15.(1) The registrar may correct any register kept by the registrar 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.

(5) For subsection (1)(b), the rights of the holder of an interest recorded in the register are not prejudiced if the holder acquired or has dealt with the interest with actual or constructive knowledge that the register was incorrect and how it was incorrect.

Examples for subsection (5)—

1. A person becomes the registered owner of a lot that is the subject of a registered easement. A new indefeasible title is created, but it does not show the

easement as an encumbrance. It is likely in these circumstances that the registrar could be satisfied that the rights of the person will not be prejudiced if the registrar corrects the register by restoring the easement as an encumbrance.

2. A new indefeasible title is issued for a lot and the registrar neglects to record on it a registered lease to which the lot is subject. A person subsequently becomes the registered owner of the lot, unaware of the incorrect state of the register in relation to the lease. It is unlikely in these circumstances that the registrar could be satisfied that the rights of the person will not be prejudiced if the registrar corrects the register by restoring the lease as an encumbrance.

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 Commonwealth, the State or a local government; 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; or

(f) a person (other than a person mentioned in paragraphs (a) to (d)) who has an interest in the lot.

(3) Also, the registrar may act under subsection (1) to prevent a dealing with a lot to give effect to an order of a court of competent jurisdiction

directed to the registrar.

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

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.

Pre-examination of plans

18A.(1) Nothing in this Act prevents the registrar from examining a plan of survey and related instruments deposited before the plan—

(a) is sealed by a local government; or

(b) is lodged for registration.

(2) Section 156 (Requisitions) applies to a plan and related instruments deposited under subsection (1).

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) On lodgment of an instrument, the registrar must register the instrument if—

(a) the person who lodged it complies with the requirements of this Act for its registration; and

(b) the instrument is not inconsistent with another Act or law.

(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 indefeasible title for 2 or more lots

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

40.(1) If the registrar has created a single indefeasible title for 2 or more lots, the registrar may create separate indefeasible 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 indefeasible title for 2 or more lots) for 2 or more of the lots.

Transfer of land forming part of indefeasible title

41. If the registrar registers an instrument of transfer for only part of the land in the indefeasible title of a lot, the registrar must create separate indefeasible 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 2A—Indefeasible title for common property

Creation of indefeasible title for common property

41A. When a community titles scheme is established, the registrar must create an indefeasible title for the common property for the scheme.

Meaning of "indefeasible title" for common property

41B. The **"indefeasible title"** for common property is the current particulars in the freehold land register about the common property.

Application of provisions of Act to common property

41C.(1) In this Act, a reference to a lot is taken to include a reference to common property.

(2) However, subsection (1) has effect only to the extent necessary to allow for the registration, and appropriate recognition under this Act, of dealings that—

(a) affect common property (including dealings affecting interests in common property); and

(b) are consistent with the BCCM Act.

(3) In particular, subsection (1) has effect subject to the following principles—

- there can be no certificate of title issued for common property
- there can be no registered owner for common property (although the body corporate for the community titles scheme that includes the common property is taken to be the registered owner for dealings affecting the fee simple interest in the common property)
- the fee simple interest in the common property for a community titles scheme can not be the subject of sale or transfer (although a part of the common property might be the subject of transfer after the registration of an appropriate plan of subdivision and the recording of a new community management statement)
- the fee simple interest in common property can not be the subject

of a mortgage (although a lesser interest able to be created over common property, for example, a lease, might be the subject of a mortgage).

(4) Without limiting subsections (2) and (3), subsection (1) has no application for the purpose of the following provisions—

- this Act's definition of **"lot"**
- division 2.

Division 3—Certificates of title

Issuing of certificates of title

42.(1) The registrar must issue a certificate containing the indefeasible title for a lot (the **"certificate of title"**) if asked in writing by the registered owner.

(2) However, if the lot is subject to a registered mortgage, the registrar may issue the certificate of title only if the mortgagee consents to the issue of the certificate.

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

(4) The registrar must give the certificate of title to the person stated in the owner's 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 184(3)(b) (Quality of registered interests) and 185(1)(c) to (g) (Exceptions to s 184); 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 2A—Format of plans of survey

Available formats for plans

48A.(1) A plan of survey may be in a standard, building or volumetric format.

(2) The format to be used in the plan depends on how the plan is to define the land to which it relates.

Standard format plan

48B. A **"standard format"** plan of survey defines land using a horizontal plane and references to marks on the ground.

Example of marks—

Posts in the ground.

Building format plan

48C.(1) A **"building format"** plan of survey defines land using the structural elements of a building, including, for example, floors, walls and ceilings.

(2) For subsection (1)—

"structural elements", of a building, includes projections of, and references to, structural elements of the building.

Example for subsection (2)—

Projections might be used to define a lot that includes a balcony, courtyard, roof garden or other area not bounded, or completely bounded, by a floor, walls and a ceiling.

Volumetric format plan

48D. A **"volumetric format"** plan of survey defines land using 3 dimensionally located points to identify the position, shape and dimensions of each bounding surface.

Division 3—Plans of subdivision

Meaning of "plan of subdivision"

49. A **"plan of subdivision"** is a plan of survey providing for 1 or more of the following—

(a) division of 1 or more lots;

(b) amalgamation of 2 or more lots to create a smaller number of lots;

(c) dedication of land to public use;

(d) redefinition of a lot on a resurvey.

Plan of subdivision may be registered

49A.(1) A plan of subdivision may be registered.

(2) A lot defined in the plan is created as a lot when the plan is registered.

Standard format plan of subdivision

49B.(1) This section applies to a standard format plan of subdivision.

(2) Common property for a community titles scheme may be created under the plan, but only if—

(a) the plan also creates 2 or more lots; or

(b) the common property created is additional to common property already existing under the community titles scheme.

(3) The plan may create a lot from common property, other than common property created under—

(a) a building format plan of subdivision, and within structural

elements of a building; or

(b) a volumetric format plan of subdivision.

Building format plan of subdivision

49C.(1) This section applies to a building format plan of subdivision.

(2) Common property for a community titles scheme must be created under the plan unless the plan divides a lot, or amalgamates 2 or more lots, on an existing registered building format plan of subdivision.

(3) Two or more lots must be created under the plan unless—

(a) the plan amalgamates 2 or more lots on an existing registered building format plan of subdivision; or

(b) common property for a community titles scheme is created under the plan, and the common property created is additional to common property already existing under the community titles scheme.

(4) Except to the extent permitted under directions of the registrar about the required format for a building format plan of subdivision, the boundary of a lot created under the plan, and separated from another lot or common property by a floor, wall or ceiling, must be located at the centre of the floor, wall or ceiling.

Volumetric format plan of subdivision

49D.(1) This section applies to a volumetric format plan of subdivision.

(2) Common property for a community titles scheme may be created under the plan, but only if—

(a) the plan also creates 2 or more lots; or

(b) the common property created is additional to common property already existing under the community titles scheme.

(3) The plan may divide a lot on a standard, building or volumetric format plan of subdivision.

Requirements for registration of plan of subdivision

50. A plan of subdivision must—

(a) distinctly show all roads, parks, reserves and other proposed lots that are to be public use land; and

(b) include a statement agreeing to the plan and dedicating the public use land by—

(i) the registered owner; or

(ii) if the mortgagee of the registered owner is in possession—the mortgagee in possession; 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 (unless the plan of subdivision provides only for the amalgamation of 2 or more lots to create a smaller number of lots, or for the redefinition of a lot on a resurvey); and

(h) if the plan of subdivision provides for the division of 1 or more lots, or the dedication of land to public use—have been approved by the local government concerned; and

(i) comply with directions of the registrar about the required format for a plan of subdivision; and

(j) be consented to by all registered mortgagees of each lot the subject of the plan and all other registered proprietors whose interests are affected by the plan.

Dedication of public use land in plan

51.(1) The dedication of a lot to public use in a plan of subdivision must be of the registered proprietor's whole interest in the lot other than for any part of the lot reserved to the registered proprietor.

(2) If the dedication is for a road, the registration of the plan operates, without anything further, to open the road for the *Land Act 1994.*

(3) If the dedication is for a public use other than a road, on registration of the plan, without anything further, the lot becomes unallocated State land under the *Land Act 1994.*

Particulars 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—

(a) each proposed lot that is not public use land; and

(b) to the extent that it is practicable—common property created under the plan.

Lodged plan that is withdrawn and re-lodged

53. If a plan of subdivision is lodged within the time specified in the *Integrated Planning Act 1997*, section 3.7.6 and is withdrawn and re-lodged under section 159 (Withdrawing lodged instrument before registration), it must be treated for the purposes of sections 175 (Time from when instrument forms part of register etc.) and 178 (Priority of registered instruments) to have been lodged when it was first lodged.

Division excluding road or watercourse

54.(1) A lot may be divided 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.

Division 4—Building management statements

Building management statement may be registered

54A.(1) A building management statement may be registered.

(2) A **"building management statement"** is an instrument that—

(a) identifies lots to which it applies; and

(b) contains provisions benefiting and burdening the lots to which it applies; and

(c) otherwise complies with the requirements of this division for a building management statement.

(3) The lots to which a building management statement applies must be lots wholly or partly contained in, or wholly or partly containing, a building.

Circumstances under which building management statement may be registered

54B.(1) A building management statement may be registered if—

(a) the statement is signed by the registered owners of all lots to which the statement applies; and

(b) the statement complies with directions of the registrar about the required format for a building management statement.

(2) The lots to which a building management statement applies must comprise—

(a) 2 or more volumetric lots; or

(b) 1 or more volumetric lots, and 1 or more standard lots.

(3) In this section—

"standard lot" means a lot on a standard format plan of subdivision.

"volumetric lot" means a lot on a volumetric format plan of subdivision.

Content of building management statement

54C.(1) A building management statement must contain provisions about the following—

(a) the supply of services to lots;

(b) rights of access to lots;

(c) rights of support and shelter;

(d) insurance arrangements.

(2) A building management statement may contain provisions about the following—

(a) establishment and operation of a management group;

(b) imposition and recovery of levies, how levy amounts are to be kept and how levy amounts are to be spent;

(c) property maintenance;

(d) architectural and landscaping standards;

(e) dispute resolution;

(f) rules for common services and facilities;

(g) administrative arrangements;

(h) arrangements for accomplishing the extinguishment of the statement.

(3) To avoid doubt, it is declared that a right of access, support or shelter, or other right in the nature of an easement, under a building management statement may operate according to its terms, and may be effective, despite the absence of a formal registered easement establishing the right.

(4) A dispute resolution provision under a building management statement may operate to require the referral of a dispute arising under the building management statement other than to a court, but the provision is ineffective to the extent that it purports to operate to stop final determination of the dispute in a court of competent jurisdiction.

Registration of building management statement

54D.(1) When registering a building management statement, the registrar must record a reference to the statement on the indefeasible title for each lot to which the statement relates.

(2) However the registrar is not obliged to examine, but may examine, a building management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a building management statement.

Amending a building management statement

54E.(1) A building management statement may be amended by registering an instrument of amendment of the building management statement.

(2) The instrument of amendment must be signed by the registered owner of all lots to which the building management statement applies.

(3) The instrument of amendment must not change the lots to which it applies.

Building management statement if lots owned by 1 registered owner

54F. A building management statement may be registered even if all the lots to which it applies have the one registered owner.

One person becoming registered owner of all lots

54G. If the one person becomes the registered owner of all lots to which a building management statement applies, the building management statement is extinguished only if the registered owner asks the registrar to extinguish it.

Extinguishing a building management statement

54H.(1) A building management statement may be extinguished by registering an instrument of extinguishment of the building management statement.

(2) The instrument of extinguishment must be signed by the registered owners of all lots to which the building management statement applies.

(3) However, a building management statement may be extinguished only if all registered mortgagees of lots to which the building management statement applies consent to the extinguishment.

Lots constituted by community titles schemes

54I. For the operation of this division—

(a) a lot could be constituted by the scheme land for a community titles scheme (other than a subsidiary scheme); and

(b) for the signing of a building management statement, or an instrument of amendment or extinguishment of a building management statement, by the registered owner of a lot—signing by the body corporate for the community titles scheme whose scheme land constitutes the lot is sufficient.

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.

(3A) If the instrument of lease (other than a lease of all or part of a building) is for the reconfiguration of a lot within the meaning of the *Integrated Planning Act 1997*, the instrument must have been approved by the local government.

(4) This section does not limit the matters that the appropriate form for an instrument of lease may require to be included in the instrument.

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 sublessee 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 a description of the debt or liability secured by the mortgage; and

(d) include a description sufficient to identify the interest to be mortgaged.

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

(a) a document has already been deposited with an instrument of transfer under section 110(3); and

(b) the details of the trust have not since changed.

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

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 registered mortgagee of a lot has the powers and liabilities of a mortgagee under the *Property Law Act 1974*, part 7.

(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 the Criminal Code, section 70; or

(b) enter into possession of the mortgaged lot by receiving rents and profits; or

(c) by a proceeding in a court of competent jurisdiction—

(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 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

Definitions for div 4

81A. In this division—

"public utility easement" means an easement in favour of a public utility provider.

"public utility provider" means—

(a) the State or a State corporation or instrumentality; or

(b) the Commonwealth or a Commonwealth corporation or instrumentality; or

(c) a local government; or

(d) a person authorised by law to provide a public utility service; or

(e) a person approved by the Minister as suitable to provide a particular public utility service.

Creation of easement by registration

82.(1) An easement over a lot may only be created by registering an instrument of easement.

(2) The instrument must state—

(a) the nature of the easement and its terms; and

(b) the land to be benefited, and the land to be burdened, by the easement.

Registration of easement

83. An instrument creating an easement over part of a lot may be

registered only if—

(a) a plan of survey designating the easement is registered; and

(b) it is signed by—

(i) the registered owner of the lot to be burdened; and

(ii) if the easement benefits another lot—the registered owner of the lot; and

(iii) if the easement benefits non-freehold land—the lessee or other person entitled to the land; and

(iv) if the easement is a public utility easement—the public utility provider.

Registration of plan showing proposed easement

83A.(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.

Limitation of easements

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

Instrument affecting freehold and non-freehold land

85.(1) If an easement benefits or burdens both freehold and non-freehold land, the easement must be registered in the appropriate registers.

(2) Further dealings affecting the easement must also be registered in the appropriate registers.

(3) If a lot subject to an easement is surrendered to the State to be dealt with under the *Land Act 1994*, the easement continues over the resulting unallocated State land only if—

(a) the easement is in favour of a public utility provider; and

(b) the Minister approves continuation of the easement.

(4) If an easement continues over unallocated State land, the continuation must be recorded in the appropriate registers.

Particulars to be registered

85A. When an easement is registered, the following particulars must be recorded in the appropriate registers—

(a) the lot burdened by the easement;

(b) any lot benefited by the easement;

(c) any registered lease benefited or burdened by the easement;

(d) if non-freehold land is benefited or burdened by the easement—any registered sublease or sub-sublease benefited or burdened by the easement.

Rights and liabilities created on registration of instrument

85B.(1) On registration of the instrument creating an easement, the easement 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.

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.(1) Despite section 82(2), it is not necessary to state the land to be benefited in a public utility easement that is not attached to, or used or enjoyed with, other land.

(2) However, a public utility easement mentioned in subsection (1)—

(a) may be registered only for the following—

(i) a right of way;

(ii) drainage or sewerage;

(iii) the supply of water, gas, electricity, telecommunication facilities or another public utility service; and

(b) may be registered in favour of a person mentioned in section 81A, definition “public utility provider”, paragraph (e), only if the easement is for the public utility service mentioned in the paragraph.

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 Property Law Act 1974, s 181

92. The *Property Law Act 1974*, section 181 applies to a registered easement.

Division 4A—Covenants

Covenant by registration

97A.(1) A lot may be made the subject of a covenant by the registration of an instrument of covenant under this division.

(2) An instrument of covenant may be registered under this division only if the covenantee under the instrument is the State, or a statutory body representing the State, or a local government.

(3) The covenant must—

(a) relate to the use of—

(i) the lot or part of the lot; or

(ii) a building, or building proposed to be built, on the lot; or

(b) relate to the conservation of a physical or natural feature of the lot, including soil, water, animals and plants; or

(c) be for ensuring that the lot may be transferred to a person only if there is also transferred to the person—

(i) another lot that is also the subject of the covenant; or

(ii) non-freehold land that, under the *Land Act 1994*, is the subject of the covenant; or

(iii) a lot mentioned in subparagraph (i) together with non-freehold land mentioned in subparagraph (ii).

(4) The covenant—

(a) may be a positive covenant or a negative covenant; and

(b) is binding on the covenantor and the covenantor's successors in title.

(5) In this section—

"use", of a building, does not include architectural or landscaping standards for the building.

Requirements of instrument of covenant

97B.(1) An instrument of covenant must—

(a) be validly executed; and

(b) include a description sufficient to identify the land to be the subject of the covenant; and

(c) include a description of the covenant.

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

Amending an instrument of covenant

97C.(1) A covenant may be amended by registering an instrument of amendment of the covenant.

(2) The instrument of amendment may be registered only if it is validly executed.

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

(a) increase or decrease the area of land the subject of the covenant; or

(b) add or remove a party to the covenant.

Releasing a covenant

97D.(1) A registered covenant may be wholly or partly discharged by registering an instrument releasing the covenant.

(2) The instrument must be signed by the covenantee.

(3) On lodgement of the instrument, the registrar may register the release to the extent shown in the instrument.

(4) On registration of the instrument, the covenant is discharged, and the lot is released from the covenant, to the extent shown in the instrument.

Application of Property Law Act 1974, s 181

97DA. The *Property Law Act 1974*, section 181,[1] applies to a registered covenant.

Division 4B—Profits a prendre

Profit a prendre by registration

97E. A lot may be made the subject of a profit a prendre by the registration of an instrument of profit a prendre under this division over the lot.

Requirements of instrument of profit a prendre

97F.(1) An instrument of profit a prendre must—

(a) be validly executed; and

(b) include a description sufficient to identify the lot to be the subject of the profit a prendre; and

(c) include a description of the profit a prendre to which the lot is to be subject, including the period for which the profit a prendre is to be enjoyed.

(2) Subsection (1) does not limit the matters that the appropriate form for an instrument of profit a prendre may require to be included in the form.

Particulars to be registered

97G. When registering an instrument of profit a prendre, the registrar must record particulars of the following in the freehold land register—

(a) the lot burdened by the profit a prendre;

(b) any lot benefited by the profit a prendre.

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1 *Property Law Act 1974*, section 181 (Power to modify or extinguish easements and restrictive covenants)

Profit a prendre benefiting and burdening same registered owner's lots

97H. If a lot is to be benefited by a profit a prendre, the instrument of profit a prendre may be registered even if—

(a) the lot benefited and the lot burdened by the profit a prendre have, or are to have, the same registered owner; or

(b) the owner of the lot benefited by the profit a prendre holds an interest in the lot burdened by the profit a prendre.

Same person becoming registered owner of benefited and burdened lots

97I. If a lot is benefited by a profit a prendre, and the same person becomes the registered owner of the lot benefited and the lot burdened by the profit a prendre, the profit a prendre is extinguished only if—

(a) the registered owner asks the registrar to extinguish the profit a prendre; or

(b) the registrar creates a single indefeasible title for the lots.

Owner of benefited land acquiring interest in burdened land

97J. If a lot is benefited by a profit a prendre, the profit a prendre is not extinguished merely because the owner of the lot benefited by the profit a prendre acquires an interest, or a greater interest, in the lot burdened by the profit a prendre.

Amending an instrument of profit a prendre

97K.(1) A profit a prendre may be amended by registering an instrument of amendment of the profit a prendre.

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

(a) increase or decrease the area of land the subject of the profit a prendre; or

(b) add or remove a party to the profit a prendre.

Releasing or removing a profit a prendre

97L.(1) On lodgment of an instrument releasing a profit a prendre to which a lot is subject, the registrar may register the release to the extent shown in the instrument of release.

(2) On registration of the instrument of release, the profit a prendre is discharged, and the lot is released from the profit a prendre, to the extent shown in the instrument of release.

(3) Also, the registrar may remove a profit a prendre from the indefeasible title for a lot if a request to remove the profit a prendre is lodged, and it is clearly established that—

(a) the period of time for which the profit a prendre was intended to subsist has ended; or

(b) the event upon which the profit a prendre was intended to end has happened.

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 the *Property Law Act 1974*, section 182.

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

How trusts may be registered

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

(a) an instrument of transfer of the interest to the person as trustee; or

(b) a request to vest the interest in the person as trustee.

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.

Instrument to vest in trustee

110A.(1) A request to vest may be lodged to vest an interest in a lot in a trustee.

(2) A request to vest must give effect to an order (the **"vesting order"**) made under the *Trusts Act 1973* or another Act.

(3) The registrar may register the request to vest.

(4) The vesting order, and all other documents (the **"other documents"**) stating details of the trust subject to which the interest is vested in the trustee, must be deposited with the request to vest.

(5) The other documents do not form part of the freehold land register.

(6) The registrar must keep certified copies of the other documents and return the originals to the person who deposited them.

Registering personal representative

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

(2) The registrar may register the lot or the interest in 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 or an interest in 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) written consent is given by—

(i) the deceased's personal representative; or

(ii) a person who, in the registrar's opinion, would succeed in an application for a grant of representation; 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) can not, 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.(1) 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.

(2) However a caveat may only be lodged by an equitable mortgagee if it is a caveat to which section 126 applies.

(3) To remove any doubt, it is declared that an interest in a lot does not include an interest in a proposed allotment under the *Land Sales Act 1984* that a person obtains when the person agrees to purchase the allotment under that Act.

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) A caveat prevents registration of another instrument affecting the lot over which the caveat is lodged from the date and time endorsed by the registrar on the caveat as the caveat's date and time of lodgment.

(1A) Subsection (1) has effect for a caveat until the caveat lapses or is cancelled, rejected, removed or withdrawn.

(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) it 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 a court of competent jurisdiction 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 a court of competent jurisdiction 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 a court of competent jurisdiction 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, or is rejected by the registrar under section 157,[2] the person who was the caveator may lodge another caveat for the lot on the same, or substantially the same, grounds only with the leave of a court of competent jurisdiction.

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), a court of competent jurisdiction may include in a judgment for compensation a component for exemplary damages.

(3) In a proceeding for compensation under subsection (1), it must be presumed that the caveat was lodged or continued without reasonable cause unless the person who lodged or continued it proves that it was lodged or continued with reasonable cause.

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2 Section 157 (Rejecting instrument for failure to comply with requisition)

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

Instrument not registered until power of attorney registered

132. An instrument executed under the authority of a power of attorney may be registered only if the power of attorney is registered under this division.

Registering power of attorney

133.(1) The registrar must keep a register of powers of attorney (the **"power of attorney register"**).

(2) 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.

(3) 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 also applies to enduring powers of attorney.

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 7A—SETTLEMENT NOTICE

Definitions for part

138. In this part—

"affected person", for a particular lot, means—

(a) a registered proprietor of the lot or an interest in the lot; or

(b) a person (other than the transferee) who has an interest in the lot.

"transferee" means—

(a) a purchaser for valuable consideration of an interest in a lot that is capable of registration by an instrument of transfer; or

(b) a person who is entitled to an interest in a lot under an instrument of transfer or an instrument of mortgage.

Requirements of settlement notice

139.(1) A settlement notice must be in the approved form and must be signed by or for the transferee.

(2) The settlement notice must specify—

(a) the type of transaction to which the settlement notice relates and the parties to the transaction; and

(b) the name of the transferee; and

(c) the description of the lot the subject of the transaction; and

(d) all instruments directly related to the transaction; and

(e) an address where documents can be served on the transferee; and

(f) the registered interest affected by the settlement notice.

Depositing settlement notice

140.(1) A settlement notice, in the approved form, may be deposited by or for a transferee in relation to a transaction.

(2) The registrar must record the information in the settlement notice under section 34.[3]

Effect of settlement notice

141.(1) The deposit of a settlement notice prevents registration of an instrument affecting the lot or an interest in the lot until the notice lapses or is withdrawn, removed or cancelled.

(2) However, a settlement notice does not prevent registration of—

(a) an instrument specified in the settlement notice as an instrument to which the notice does not apply; or

(b) an instrument if the transferee consents to its registration; or

(c) an instrument of transfer of mortgage executed by a mortgagee whose interest was registered before lodgment of the notice; or

(d) another interest that, if registered, will not affect the interest the subject of the notice; or

(e) an instrument lodged before the notice.

Withdrawing settlement notice

142. A transferee may withdraw a settlement notice by depositing a request to withdraw it.

Lapsing of settlement notice

143. A settlement notice lapses—

(a) 2 months after it is deposited; or

(b) when all instruments directly related to the transaction, and specified in the settlement notice, have been lodged;

whichever happens first.

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3 Under section 34 the registrar may keep information separately from the freehold land register.

Removing settlement notice

144.(1) An affected person may at any time apply to the Supreme Court for an order that a settlement notice be removed.

(2) The Supreme Court may make the order whether or not the transferee has been served with the application, and may make the order on the terms it considers appropriate.

Cancelling settlement notice

145.(1) The registrar may cancel a settlement notice if a request to cancel the notice is deposited and the registrar is satisfied that—

(a) the transferee's interest in the transaction specified in the notice has ceased, or has been abandoned or withdrawn; or

(b) the transferee's interest has been settled by agreement or otherwise satisfied; or

(c) the nature of the transferee's interest does not entitle the transferee to prevent registration of an instrument that has been lodged.

(2) The registrar must notify the transferee of the registrar's intention to cancel the settlement notice at least 7 days before cancelling it.

No further settlement notice for same transaction

146. If a settlement notice for a lot lapses or is withdrawn, removed or cancelled, another settlement notice can not be deposited for the lot for the same transaction.

Compensation for improper settlement notice

147.(1) A person who deposits or continues a settlement notice without reasonable cause must compensate anyone else who suffers loss or damage as a result.

(2) In a proceeding for compensation under subsection (1)—

(a) the Supreme Court may include in a judgment for compensation a component for exemplary damages; and

(b) proof that a settlement notice was not deposited or was not

continued without reasonable cause rests on the person who lodged or continued the notice.

Notices to the transferee

148. A notice under this part to a transferee is sufficiently served if left at or sent to the address specified in the settlement notice.

Registrar may withdraw instrument

149.(1) The registrar may withdraw an instrument that has been lodged but prevented from being registered by a settlement notice.

(2) However, the registrar must notify the person who lodged the instrument of the registrar's intention to withdraw the instrument at least 14 days before withdrawing it.

(3) An instrument withdrawn by the registrar under subsection (1) is taken to have been withdrawn under section 159(1)(a).[4]

Priority of instruments

150. Instruments lodged, but prevented from being registered by a settlement notice, are taken to have been lodged (in the order in which they were lodged) immediately after lodgment of the directly related instruments specified in the notice.

Effect of transferee's notice on caveat

151. A person's right to lodge a caveat is not affected by a settlement notice.

Minor correction of settlement notice

152. On receiving a written request from the transferee specified in a

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4 Under section 159(1)(a) the registrar may withdraw an instrument. An instrument that is withdrawn loses its priority.

settlement notice, the registrar may make a correction in the notice if the registrar is satisfied that it is minor.

PART 8—INSTRUMENTS

Division 1—General

When instrument capable of registration

153. 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

154.(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

155.(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

156.(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

157.(1) If a requisition under section 156 (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 178 (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

158.(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;

(b) a person on whose behalf an instrument was lodged or deposited;

(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

159.(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

160. The registrar may require a person to deposit an instrument for correction or cancellation.

Execution and proof

161.(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 the *Property Law Act 1974*, section 46.

(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.

(3A) If an instrument is executed by a solicitor authorised by a transferee or a person in whose favour an interest is created, the execution need not be witnessed.

(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

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

(a) first take reasonable steps to ensure 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

163.(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

164.(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

165.(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

166.(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.

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

Division 2—Standard terms documents forming part of instruments

Meaning of "standard terms document" in div 2

168. In this division—

"standard terms document" means a document containing provisions that are treated as terms of an instrument to which the document is to apply or applies.

Standard terms document to which instrument refers may be registered

169.(1) The registrar or another person may lodge a standard terms document and may amend the standard terms document by lodging a further standard terms document.

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

Standard terms document that is part of an instrument

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

(a) says it forms part of the instrument; and

(b) belongs to a class identified in the standard terms document as an instrument to which the standard terms document applies.

Instrument not limited to that contained in standard terms document

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

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

Withdrawal or cancellation of standard terms document

172.(1) The registrar may withdraw a registered standard terms document if asked to withdraw it by the person who lodged it.

(2) The registrar may cancel a registered standard terms 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 standard terms document cancelled or withdrawn under this section.

(4) Withdrawal or cancellation of a standard terms 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

173. 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

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

Time from when instrument forms part of register etc.

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

Registered instrument operates as a deed

176. A registered instrument operates as a deed.

Order of registration of instruments

177.(1) Instruments affecting a lot, including instruments affecting or creating an interest in the lot, must be registered in the order in which they are lodged.

(2) Subsection (1) is subject to section 159.[5]

(3) Despite subsection (1), if an instrument (**"instrument 2"**) affecting a lot is lodged after another instrument (**"instrument 1"**) affecting the lot, instrument 2 may be registered before instrument 1 if the registration of

[5] Section 159 (Withdrawing lodged instrument before registration)

instrument 2 can not affect any interest that a person might claim under instrument 1.

Example for subsection (3)—

An instrument of easement over a lot (**"instrument 1"**) is lodged for registration. Subsequently, an instrument releasing a mortgage of the lot (**"instrument 2"**) is lodged for registration. However, the registrar has given the person who lodged instrument 1 a requisition relating to instrument 1, and instrument 1 can not yet be registered. The registrar could register instrument 2 even though instrument 1 has not been registered.

Priority of registered instruments

178.(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

179. 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

180. 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

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

Effect of registration on interest

182. 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

183. 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

184.(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 185 (Exceptions to s 184); 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 184

185.(1) A registered proprietor of a lot does not obtain the benefit of section 184 (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

186.(1) If the registrar is satisfied that section 185(1)(g) (Exceptions to s 184) 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

187.(1) If there has been fraud by the registered proprietor or section 185(1)(c) to (g) (Exceptions to s 184) 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

Compensation for deprivation of lot or interest in lot

188.(1) This section applies if a person (the **"claimant"**) is deprived of a lot, or an interest in a lot, 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) 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

(g) an omission, mistake, breach of duty, negligence or misfeasance of or by the registrar or a member of the staff in the land registry; or

(h) the exercise by the registrar of a power in relation to an application or dealing with which the person had no connection.

(2) The claimant is entitled to compensation from the State for the deprivation.

Compensation for loss or damage

188A.(1) This section applies if a person (the **"claimant"**) suffers loss or damage because of—

(a) the incorrect creation of an indefeasible title in the name of another person; or

(b) incorrect registration; or

(c) an error in an indefeasible title or in the freehold land register; or

(d) reliance on the incorrect state of the freehold land register; or

(e) 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

(f) omission, mistake, breach of duty, negligence or misfeasance of or by the registrar or a member of the staff of the land registry; or

(g) the exercise by the registrar of a power in relation to an application or dealing of which the person had no connection.

(2) The claimant is entitled to compensation from the State for the loss or damage.

(3) Despite anything in subsection (1) or (2), the claimant is not entitled to compensation under this section for loss or damage caused by the incorrectness of a register kept by the registrar if the registrar may correct the register under section 15.[6]

(4) Subsection (3) does not limit the claimant's rights to compensation otherwise than under subsections (1) and (2).

Order by Supreme Court about deprivation, loss or damage

188B.(1) For section 188 or 188A, a claimant may apply to the Supreme Court for an order—

(a) about the amount of compensation to be paid by the State; or

(b) directing the registrar to take stated action.

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6 Section 15 (Registrar may correct registers)

(2) The court may make the order it considers just.

(3) Without limiting subsection (2), the court may by order direct the registrar to—

(a) cancel or correct an indefeasible title or other particulars in the freehold land register; or

(b) create a new indefeasible title; or

(c) issue a new instrument; or

(d) do anything else.

Matters for which there is no entitlement to compensation

189.(1) A person is not entitled to compensation from 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) because of unlawful conduct mentioned in the *Queensland Law Society Act 1952*, section 24A; or

(d) 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

(e) caused when the registrar corrected an indefeasible title that mistakenly included the person's land, unless the person suffered loss or damage under section 188A(1)(d);[7] or

(f) because of an error in the location of a lot's boundaries or in a

[7] Section 188A (Compensation for loss or damage)

lot's area; or

(g) because of an error or shortage in area of a lot according to a plan lodged in the land registry; or

(h) 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; or

(i) because of the registrar's lodgment of a caveat under section 17.

(1A) A failure to obtain a certificate of title for a lot may not be taken into account in considering whether, under subsection (1)(b), a person, or 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 of the lot or an interest in the lot.

(2) In this section—

"indemnified solicitor" means a solicitor covered by indemnity insurance (however described) under the *Queensland Law Society Act 1952*.

State's right of subrogation

190.(1) On payment of any compensation under section 188 or 188A,[8] 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.

[8] Section 188 (Compensation for deprivation of lot or interest in lot) or 188A (Compensation for loss or damage)

PART 10—LIENS

Vendor does not have equitable lien

191. 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

192.(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

193.(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

194. The chief executive may approve forms for use under this Act.

Reference to instrument is reference to instrument completed in appropriate form

195. 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.

196.(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

197.(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) can not 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

198. 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

199.(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) requirements for particular formats of plans of survey;

(k) anything else about a form or instrument;

(l) recording of a community management statement.

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

PART 12—SAVINGS AND TRANSITIONAL PROVISIONS

Division 1—Savings and transitional provisions for Act No. 11 of 1994

Things made under repealed Acts

200.(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,[9] is as effective as if it had been done under this Act.

Interests and certificates of title under repealed Acts

201.(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.

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9 The Acts repealed by this Act included the following—
Real Property Act 1861
Real Property Act 1877
Real Property (Commonwealth Titles) Act 1924
Real Property (Commonwealth Defence Notification) Act 1929.

Effect of repeal by this Act

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

(a) the *Real Property Act 1877*, section 11 continues to apply to a lease granted before this Act commenced;

(b) the *Real Property Acts and Other Acts Amendment Act 1986*, section 5 continues to apply to a bill of encumbrance and memorandum of transfer-and-charge registered or executed before this Act commenced;

(c) the *Real Property Act 1861*, sections 126 to 129 and section 135 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 wrongdoing by the registrar;

that happened before this Act commenced;

(d) the *Real Property Act 1861*, section 119A continues to apply to plans mentioned in section 83A[10] of this Act that were lodged or registered before this Act commenced.

Registration of instrument lodged before commencement of this Act

204.(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.

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10 Section 83A (Registration of plan showing proposed easement)

Reference to registrar-general etc.

205.(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 the *Acts Interpretation Act 1954*, section 14H (References taken to be included in citation of law).

(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

206. 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

207. 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.

Division 2—Transitional provision for Act No. 57 of 1995

References to registrar of dealings

208. In an Act or document, a reference to the registrar of dealings may, if the context permits, be taken to be a reference to the registrar of titles.

Division 3—Transitional provision for Guardianship and Administration Act 2000

Authorisation under repealed s 136 continues for 1 year

209. An authorisation under section 136 that is in force immediately before the repeal of the section continues to have effect for 1 year after the repeal as if the section had not been repealed.

SCHEDULE 1

WITNESSES TO INSTRUMENTS

section 161

Place of execution of instrument	Persons who can witness execution
In a State, Territory or place outside Australia	• 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	• a person prescribed by regulation.

SCHEDULE 2

DICTIONARY

section 4

"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" see section 194.

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

"BCCM Act" means the *Body Corporate and Community Management Act 1997.*

"body corporate" see BCCM Act, schedule 4.[11]

"building" means a fixed structure that is wholly or partly enclosed by walls and is roofed, and includes a part of a building.

"building format" see section 48C.

"building management statement" see section 54A(2).

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11 BCCM Act, schedule 4—
"body corporate" means a body corporate created under this Act for a community titles scheme.

SCHEDULE 2 (continued)

"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).

"common property", for a community titles scheme, see BCCM Act.[12]

"community titles scheme" see BCCM Act.[13]

"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.

"enforcement warrant" means an enforcement warrant under—

(a) the *Supreme Court Act of Queensland 1991*, section 93A; or

(b) the *State Penalties Enforcement Act 1999*, section 63.

"error" includes an error by omission.

"fee" includes tax.

"freehold land register" means the freehold land register kept under this Act.

"indefeasible title" see sections 38 and 41B.

"instrument" includes—

(a) a deed of grant or certificate of title; and

(b) a will, grant of representation, or exemplification of a will, that

---

12 BCCM Act, schedule 4—
"common property" see section 11.

13 BCCM Act, schedule 4—
"community titles scheme" see section 11.

SCHEDULE 2 (continued)

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 subdivision; or

(b) the recording of particulars of an instrument;

and includes a lot under the *Building Units and Group Titles Act 1980*.

"mortgage" includes a charge on a lot or an interest in a lot for securing money or money's worth.

"plan of subdivision" see section 49.

"plan of survey" includes a plan 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 use land" means land dedicated to public use by a plan of subdivision.

"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.

SCHEDULE 2 (continued)

"registrar" means the registrar of titles.

"scheme land" see BCCM Act.[14]

"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.

"standard format" see section 48B.

"subsidiary scheme" see BCCM Act.[15]

"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.

"volumetric format" see section 48D.

"writ of execution" means a writ or warrant of execution after judgment in any court, and includes an enforcement warrant.[16]

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14 BCCM Act, schedule 4—
"scheme land" see section 11.

15 BCCM Act, schedule 4—
"subsidiary scheme" see section 19.

16 See *Supreme Court of Queensland Act 1991*, section 129 (Abolition of old enforcement processes).

ENDNOTES

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 28 November 2000. Future amendments of the Land Title Act 1994 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	**=**	**Acts Interpretation Act 1954**	**(prev)**	**=**	**previously**
amd	**=**	**amended**	**proc**	**=**	**proclamation**
amdt	**=**	**amendment**	**prov**	**=**	**provision**
ch	**=**	**chapter**	**pt**	**=**	**part**
def	**=**	**definition**	**pubd**	**=**	**published**
div	**=**	**division**	**R[X]**	**=**	**Reprint No.[X]**
exp	**=**	**expires/expired**	**RA**	**=**	**Reprints Act 1992**
gaz	**=**	**gazette**	**reloc**	**=**	**relocated**
hdg	**=**	**heading**	**renum**	**=**	**renumbered**
ins	**=**	**inserted**	**rep**	**=**	**repealed**
lap	**=**	**lapsed**	**s**	**=**	**section**
notfd	**=**	**notified**	**sch**	**=**	**schedule**
o in c	**=**	**order in council**	**sdiv**	**=**	**subdivision**
om	**=**	**omitted**	**SIA**	**=**	**Statutory Instruments Act 1992**
orig	**=**	**original**	**SIR**	**=**	**Statutory Instruments Regulation 1992**
p	**=**	**page**			
para	**=**	**paragraph**	**SL**	**=**	**subordinate legislation**
prec	**=**	**preceding**	**sub**	**=**	**substituted**
pres	**=**	**present**	**unnum**	**=**	**unnumbered**
prev	**=**	**previous**			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 33 of 1994	27 July 1994
2	to Act No. 81 of 1994	28 April 1995
3	to Act No. 81 of 1994	7 July 1995
3A	to Act No. 37 of 1996	5 March 1997
4	to Act No. 28 of 1997	1 August 1997
4A	to Act No. 40 of 1997	16 October 1997
4B	to Act No. 78 of 1997	4 February 1998
4C	to Act No. 20 of 1998	2 July 1998
4D	to Act No. 31 of 1998	25 September 1998
5	to Act No. 31 of 1998	6 November 1998
5A	to Act No. 48 of 1998	18 December 1998
5B	to Act No. 2 of 2000	20 March 2000
5C	to Act No. 8 of 2000	7 July 2000

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	1, 3
Obsolete and redundant provisions	3
Renumbered provisions	2

6 List of legislation

Land Title Act 1994 No. 11
date of assent 7 March 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 24 April 1994 (1994 SL No. 132)

as amended by—

Land Title Amendment Act 1994 No. 33
date of assent 30 June 1994
ss 1–2 commenced on date of assent
remaining provisions commenced 24 April 1994 (see s 2)

Building Units and Group Titles Act 1994 No. 69 ss 1–2, 229 sch 2
date of assent 1 December 1994
ss 1–2 commenced on date of assent
remaining provisions never proclaimed into force and rep 1995 No. 58 s 5(1) sch 7

Land Act 1994 No. 81 ss 1–2, 525 sch 3, 526 sch 4, 527 sch 5 (as amd 1995 No. 32 s 23 sch (as from 14 June 1995))
date of assent 1 December 1994
ss 1–2 commenced on date of assent
s 525 sch 3 commenced 24 April 1994 (see s 2(2))
s 526 sch 4 (other than amdts 1 and 3) commenced 6 February 1995 (1995 SL No. 19)
s 526 sch 4 amdts 1 and 3 commenced 25 April 1995 (1995 SL No. 107)
remaining provisions commenced 1 July 1995 (1995 SL No. 185)

Statute Law Revision Act 1995 No. 57 ss 1–2, 4 sch 2
date of assent 28 November 1995
commenced on date of assent

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1
date of assent 28 November 1995
commenced on date of assent

Land Title Amendment Act 1996 No. 8
date of assent 9 May 1996
commenced on date of assent

Queensland Law Society Legislation Amendment Act 1996 No. 21 pts 1, 3
date of assent 15 August 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 16 May 1996 (see s 2)

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2
date of assent 22 October 1996
ss 1–2 commenced on date of assent
remaining provisions commenced 1 December 1996 (1996 SL No. 361)

Body Corporate and Community Management Act 1997 No. 28 ss 1–2, 295 sch 3
date of assent 22 May 1997
ss 1–2 commenced on date of assent
remaining provisions commenced 13 July 1997 (1997 SL No. 210)

Land Sales and Land Title Amendment Act 1997 No. 40 s 1 pt 3
date of assent 25 August 1997
commenced on date of assent

Natural Resources and Other Legislation Amendment Act 1997 No. 78 pts 1, 7
date of assent 5 December 1997
commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch
date of assent 23 March 1998
ss 1–2 commenced on date of assent
remaining amdts commenced 30 March 1998 (1998 SL No. 55)

Civil Justice Reform Act 1998 No. 20 ss 1, 2(3), 27 sch 2
date of assent 1 May 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 1999 (automatic commencement under AIA s 15DA(2) (1999 SL No. 70 s 2(3))

Integrated Planning and Other Legislation Amendment Act 1998 No. 31 ss 1, 2(5) pt 6
date of assent 3 September 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 12 October 1998 (1998 SL No. 270)

Valuation of Land and Other Legislation Amendment Act 1998 No. 48 pts 1, 3
date of assent 27 November 1998
ss 1–2 commenced on date of assent
remaining provisions commenced 18 December 1998 (1998 SL No. 364)

State Penalties Enforcement Act 1999 No. 70 ss 1–2, 166 sch 1
date of assent 6 December 1999
ss 1–2 commenced on date of assent
remaining provisions commenced 27 November 2000 (2000 SL No. 274)

Natural Resources and Other Legislation Amendment Act 2000 No. 2 pts 1, 4
date of assent 8 March 2000
commenced on date of assent

Guardianship and Administration Act 2000 No. 8 ss 1–2, 263 sch 3
date of assent 20 April 2000
ss 1–2 commenced on date of assent
remaining provisions commenced 1 July 2000 (2000 SL No. 125)

7 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 9.

Commencement
s 2 om R3 (see RA s 37)

Definitions—the dictionary
s 4 pres s 4 ins 1997 No. 28 s 295 sch 3

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s 6 amd 1996 No. 37 s 147 sch 2

Form of registers
s 8 amd 1994 No. 81 s 527 sch 5

Execution of certain instruments
s 11 amd 1994 No. 81 s 527 sch 5

Registrar may authorise printing and sale of forms
s 14 amd 1994 No. 33 s 4

Registrar may correct registers
prov hdg amd 1994 No. 81 s 527 sch 5
s 15 amd 1994 No. 81 s 527 sch 5; 1997 No. 28 s 295 sch 3

Registrar may prepare and register caveat
s 17 amd 1997 No. 28 s 295 sch 3

Pre-examination of plans
s 18A ins 1994 No. 81 s 526 sch 4

PART 3—FREEHOLD LAND REGISTER
Registrar must register instruments
s 30 amd 1998 No. 48 s 15

Division 2A—Indefeasible title for common property
div 2A (ss 41A–41C) ins 1997 No. 28 s 295 sch 3

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s 42 amd 1994 No. 33 s 5
sub 1996 No. 8 s 3

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Division 3—Plans of subdivision
div hdg sub 1997 No. 28 s 295 sch 3

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s 49 sub 1997 No. 28 s 295 sch 3

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s 49A ins 1997 No. 28 s 295 sch 3

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s 49B ins 1997 No. 28 s 295 sch 3

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s 49C ins 1997 No. 28 s 295 sch 3

Volumetric format plan of subdivision
s 49D ins 1997 No. 28 s 295 sch 3

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s 50 amd 1994 No. 33 s 6; 1994 No. 81 s 527 sch 5; 1997 No. 28 s 295 sch 3

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s 51 sub 1994 No. 81 s 527 sch 5
amd 1997 No. 28 s 295 sch 3

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s 52 sub 1997 No. 28 s 295 sch 3

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s 53 om 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
amd 1998 No. 13 s 191 sch

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s 54 amd 1997 No. 28 s 295 sch 3

Division 4—Building management statements
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s 74 amd 1994 No. 33 s 9

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s 78 amd 1994 No. 33 s 10; 1994 No. 81 s 527 sch 5

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sdiv hdg om 1997 No. 78 s 82

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s 81A ins 1997 No. 78 s 82

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s 82 amd 1997 No. 78 s 83

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s 83 sub 1997 No. 78 s 84

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s 83A ins 1994 No. 81 s 527 sch 5

Instrument affecting freehold and non-freehold land
s 85 sub 1994 No. 81 s 527 sch 5

Particulars to be registered
s 85A ins 1997 No. 78 s 85

Rights and liabilities created on registration of instrument
s 85B ins 1997 No. 78 s 85

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s 89 amd 1997 No. 28 s 295 sch 3
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Subdivision B—Creation of easements by registration of plans
sdiv hdg om 1997 No. 78 s 87

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s 93 om 1997 No. 78 s 87

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s 94 om 1994 No. 81 s 527 sch 5

Creation of easement by plan of survey
prov hdg amd 1997 No. 28 s 295 sch 3
s 95 amd 1997 No. 28 s 295 sch 3
om 1997 No. 78 s 87

Limitations on creation of easements under subdivision
s 96 om 1997 No. 78 s 87

Rights created on registration of plan and instrument
s 97 om 1997 No. 78 s 87

Division 4A—Covenants
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s 97A ins 1997 No. 28 s 295 sch 3
amd 2000 No. 2 s 28

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s 97B ins 1997 No. 28 s 295 sch 3

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s 97C ins 1997 No. 28 s 295 sch 3
amd 2000 No. 2 s 29

Releasing a covenant
s 97D ins 1997 No. 28 s 295 sch 3
amd 2000 No. 2 s 30

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s 97DA ins 2000 No. 2 s 30

Division 4B—Profits a prendre
div 4B (ss 97E–97L) ins 1997 No. 28 s 295 sch 3

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prov hdg sub 1994 No. 81 s 527 sch 5
s 109 amd 1994 No. 81 s 527 sch 5
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s 110A ins 1997 No. 28 s 295 sch 3

Registering personal representative
s 111 amd 1994 No. 81 s 527 sch 5

Registering beneficiary
s 112 amd 1994 No. 81 s 527 sch 5

Lodging a caveat
s 122 amd 1994 No. 33 s 11; 1997 No. 40 s 30

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s 124 amd 1997 No. 28 s 295 sch 3

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s 126 amd 1997 No. 28 s 295 sch 3

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s 129 amd 1997 No. 28 s 295 sch 3; 1997 No. 78 s 88

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s 130 amd 1997 No. 28 s 295 sch 3

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s 132 amd 1994 No. 33 s 12
sub 1997 No. 28 s 295 sch 3

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s 132A ins 1994 No. 81 s 527 sch 5
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s 136 om 2000 No. 8 s 263 sch 3

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s 140 ins 1994 No. 81 s 526 sch 4

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s 142 ins 1994 No. 81 s 526 sch 4

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s 144 ins 1994 No. 81 s 526 sch 4

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s 145 ins 1994 No. 81 s 526 sch 4

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s 146 ins 1994 No. 81 s 526 sch 4

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s 147 ins 1994 No. 81 s 526 sch 4

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s 148 ins 1994 No. 81 s 526 sch 4

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s 149 ins 1994 No. 81 s 526 sch 4

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s 150 ins 1994 No. 81 s 526 sch 4

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s 151 ins 1994 No. 81 s 526 sch 4

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s 161 amd 1994 No. 81 s 527 sch 5

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s 162 amd 1994 No. 33 s 14

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s 168 sub 1997 No. 28 s 295 sch 3

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prov hdg amd 1997 No. 28 s 295 sch 3
s 169 amd 1997 No. 28 s 295 sch 3

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prov hdg amd 1997 No. 28 s 295 sch 3
s 170 amd 1997 No. 28 s 295 sch 3

Instrument not limited to that contained in standard terms document
prov hdg amd 1997 No. 28 s 295 sch 3
s 171 amd 1997 No. 28 s 295 sch 3

Withdrawal or cancellation of standard terms document
prov hdg amd 1997 No. 28 s 295 sch 3
s 172 amd 1997 No. 28 s 295 sch 3

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s 177 sub 1997 No. 28 s 295 sch 3

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s 188 sub 1997 No. 28 s 295 sch 3

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s 188B ins 1997 No. 28 s 295 sch 3

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s 189 amd 1996 No. 21 s 6; 1997 No. 28 s 295 sch 3

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s 190 amd 1997 No. 28 s 295 sch 3

Words and expressions used in instruments under Act
s 192 prev s 192 exp 24 April 1995 (see prev s 192(3))

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s 194 amd 1994 No. 33 s 15

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s 199 amd 1997 No. 28 s 295 sch 3

PART 12—SAVINGS AND TRANSITIONAL PROVISIONS
pt hdg sub 2000 No. 8 s 263 sch 3

Division 1—Savings and transitional provisions for Act No. 11 of 1994
div hdg ins 2000 No. 8 s 263 sch 3

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s 202 ins 1994 No. 81 s 525 sch 3
amd 1995 No. 58 s 4 sch 1
exp 24 April 1999 or on a later date prescribed by regulation (see s 202(7))
AIA s 20A applies (see s 202(6))

Effect of repeal by this Act
s 203 amd 1998 No. 48 s 16

Division 2—Transitional provision for Act No. 57 of 1995
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def **"appropriate form"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"approved form"** om from prev s 4 1997 No. 28 s 295 sch 3
ins 1997 No. 28 s 295 sch 3
def **"bankruptcy"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"building"** ins 2000 No. 2 s 31
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def **"caveator"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"certificate of title"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"correct"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"deed of grant"** reloc from prev s 4 1997 No. 28 s 295 sch 3
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def **"enforcement warrant"** ins 1998 No. 20 s 27 sch 2
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def **"instrument"** reloc from prev s 4 1997 No. 28 s 295 sch 3
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def **"lodge"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"lot"** sub 1994 No. 69 s 229 sch 2 (never proclaimed into force and om 1995 No. 58 s 5(1) sch 7)
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def **"register"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"registered owner"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"registered proprietor"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"registrar"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"short lease"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"sketch plan"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"term"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"time share scheme"** reloc from prev s 4 1997 No. 28 s 295 sch 3
def **"writ of execution"** amd 1994 No. 33 s 3(3)
reloc from prev s 4 1997 No. 28 s 295 sch 3
amd 1998 No. 20 s 27 sch 2

8 List of forms

Note—Forms 11, 13, 15, 19 and 22 currently apply only to the Land Title Act 1994. The other forms listed apply to both the Land Act 1962 and the Land Title Act 1994.

Form 1 version 2—Transfer
pubd gaz 14 October 1994 p 583

Form 2 version 2—Mortgage
pubd gaz 14 October 1994 p 583

Form 3 version 2—Release of mortgage
pubd gaz 14 October 1994 p 583

Form 4 version 2—Request to record death
pubd gaz 14 October 1994 p 583

Form 5 version 2—Transmission application by personal representative (Grant in Queensland)
pubd gaz 14 October 1994 p 583

Form 5A version 1—Transmission application by personal representative (No grant in Queensland)
pubd gaz 14 October 1994 p 583

Form 6 version 2—Transmission application for registration as devisee/legatee
pubd gaz 14 October 1994 p 583

Form 7 version 2—Lease/sublease
pubd gaz 14 October 1994 p 583

Form 8 version 2—Surrender of freehold lease or Land Act sublease
pubd gaz 14 October 1994 p 583

Form 9 version 2—Easement
pubd gaz 14 October 1994 p 583

Form 10 version 2—Surrender of easement
pubd gaz 14 October 1994 p 583

Form 11 version 2—Caveat
pubd gaz 14 October 1994 p 583

Form 12 version 2—Request to register writ of execution
pubd gaz 14 October 1994 p 583

Form 13 version 2—Amendment/priority
pubd gaz 14 October 1994 p 583

Form 14 version 2—General request
pubd gaz 14 October 1994 p 583

Form 15 version 2—Request to amalgamate
pubd gaz 14 October 1994 p 583

Form 16 version 2—Request to register—Power of attorney—Revocation of power of attorney
pubd gaz 14 October 1994 p 583

Form 17 version 2—Request—For substitute instrument—To dispense with production of instrument
pubd gaz 14 October 1994 p 583

Form 18 version 2—General consent
pubd gaz 14 October 1994 p 583

Form 19 version 2—Application for title
pubd gaz 14 October 1994 p 583

Form 20 version 1—Schedule/enlarge panel/additional page/document (s 154)/declaration
pubd gaz 15 April 1994 p 1441

Form 21 version 1—Survey plan
pubd gaz 15 April 1994 p 1441

Form 22 version 1—Certificate of title
pubd gaz 15 April 1994 p 1441

9 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS [Reprint No. 2]
under the Reprints Act 1992 as required by the Land Title Act 1994 s 193

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