

This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

W. L. S. COOPER,
Clerk of the Parliaments.

*Legislative Council Chamber,
Sydney, 10th November, 1920.*

New South Wales.



ANNO UNDECIMO

GEORGII V REGIS.

Act No. , 1920.

An Act to amend the Real Property Act, 1900, the Public Works and Closer Settlement Funds Act, 1906, and other Acts; and for other purposes.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited as the "Real Property (Amendment) Act, 1920."

Real Property (Amendment).

Amendments of Real Property Act.

2. Subsection one of section fourteen of the Real Property Act, 1900, is repealed, and the following subsection substituted therefor :—

New subsection (1) of s. 14 of Real Property Act.

5 (1) Land not subject to the provisions of this Act may be brought under its provisions.

3. Subsection one of section seventeen of the said Act is amended by inserting after the word "applicant" the words "for such period as he considers sufficient."

Amendment of s. 17 (1).

10 **4.** Section nineteen of the said Act is amended by adding the following proviso :—"Provided that the Registrar-General may, in his discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the

15 applicant is imperfect, take the steps in the last preceding section provided, and may bring the land under the provisions of this Act; but in such case he may, notwithstanding section one hundred and nineteen, require payment to him of such special fee as he

20 considers adequate in addition to that provided in the Nineteenth Schedule.

Amendment of s. 19.

5. Section fifty-six of the said Act is amended by adding at the end thereof the following subsections :—

Amendment of s. 56.

25 (4) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered any easement over other land of which the mortgagor or encumbrancer is the registered proprietor and the grant or certificate

30 of title of which is specified in the memorandum of mortgage or memorandum of encumbrance.

35 (5) When an easement is so expressed to be included the Registrar-General shall on registration of the memorandum of mortgage or memorandum of encumbrance enter a memorial of the instrument in which such easement is expressed to be included upon the folium of the register book constituted by the existing grant or certificate of title of the land over which the easement is expressed to be included.

(6)

Real Property (Amendment).

- 5 (6) The easement so expressed to be included shall, when the memorandum of mortgage or memorandum of encumbrance is registered, be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment leasing or transfer by the mortgagee or encumbrancee or of foreclosure, and so that upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee such easement shall, unless expressly excluded, be created by the order or decree for foreclosure or the lease or transfer and entry or registration thereof.
- 10 (7) Subsections four, five, and six of this section shall extend to instruments registered before as well as after the commencement of those subsections. Provided that it shall be optional only for the Registrar-General to comply with subsection five of this section if the instrument was registered before such commencement.
- 15 **6.** (1) Section eighty-eight of the said Act is amended by omitting all words following the word "hereto" and inserting the following: "Provided that no instrument executed under a power of attorney shall be registered under this Act unless such power of attorney has been registered as provided for by the Conveyancing Act, 1919." Amendment of ss. 88 and 89.
- 20 **7.** (2) Section eighty-nine of the said Act is amended by omitting all words following the words "the like purpose."
- 25 **7.** Subsection three of section ninety-four of the said Act is repealed, and the following is substituted therefor:— New subsection (3) of s. 94.
- 30 (3) The Registrar-General may if he thinks fit, upon production of such other evidence of the death as appears to him sufficient, dispense with the said certificate of death.
- 35 **8.** (1) Subsection five of section ninety-four of the said Act is amended by omitting the words "and the examiners," and by inserting the word "been" after the word "have." Amendment of subsection (5) of s. 94.
- 40 (2) Subsection seven of the same section is amended by omitting the word "general." **9.**

Real Property (Amendment).

9. (1) Subsection one of section ninety-five of the said Act is repealed, and the following substituted therefor:—

New sub
section (1)
of s. 95.

(1) The Registrar-General may—

- 5 (a) reject such application altogether; or
(b) cause notice thereof by advertisement, or the serving or posting of notices, to be given as he thinks fit; or
10 (c) dispense with the giving of any such notice.

(2) Subsection two of the same section is amended by omitting the words "not less than one month from the date of the advertisement in the Gazette."

Amendment
of subsection
(2).

(3) Subsection six of the same section is repealed.

Repeal of
subsection (6).

15 **10.** (1) Section one hundred and twenty-one of the said Act is amended as follows:—

Provisions as
to costs of
proceedings
under ss. 121,
122, and 123.

(a) By omitting from subsection one the words "at his own costs;" and

20 (b) by omitting from subsection three the words "and all expenses attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint, unless the judge or court shall certify that there were no probable grounds for such refusal or direction as aforesaid."

25 (2) Section one hundred and twenty-two of the said Act is amended as follows:—

30 (a) By omitting from subsection one the word "Examiners" and substituting the word "Registrar-General";

(b) by omitting from subsection two the words "Examiners and";

35 (c) by omitting from subsection three the words "Examiners" and substituting the word "Registrar-General"; and

(d) by omitting subsection four.

(3) The following new section is inserted next after section one hundred and twenty-three of the said Act:—

New s. 123.

40 123A. Upon any summons or proceeding under the three last preceding sections the court may make such

Real Property (Amendment).

such order as to the costs and expenses of and attendant upon such summons or proceeding as it deems just, and all costs and expenses to be paid by the Registrar-General under such order shall
5 be paid out of the closer settlement fund.

11. (1) Where property of the State of New South Wales used exclusively in connection with a department of the Public Service which is transferred to the Commonwealth consists of land registered under the Real
10 Property Act, 1900, and the land has become vested in the Commonwealth under the provisions of the Commonwealth of Australia Constitution Act, upon application in that behalf made to the Registrar-General and the consent thereto of the Attorney-General for New South
15 Wales, the Registrar-General shall register the Commonwealth as the proprietor of the land.

As to land vested in the Commonwealth under s. 85 of the Commonwealth of Australia Constitution Act.
cf. Act No. 2966 (Vict.).

(2) This section applies notwithstanding that the registered proprietor of the land is the King.

(3) This section applies whether the department
20 is transferred to the Commonwealth before or after the commencement of this Act.

(4) In this section the expressions "property of the State," "used exclusively in connection with," "department of the Public Service," and "transferred
25 to the Commonwealth," have the same meanings respectively as in section eighty-five of the Commonwealth of Australia Constitution Act.

Amendment of Public Works and Closer Settlement Funds Act.

12. Subsection two of section six of the Public Works and Closer Settlement Funds Act, 1906, is amended as follows:—

Amendment of s. 6 (2) of Public Works and Closer Settlement Funds Act, 1906.

- (a) By inserting after "1900" the words "or any Act amending it"; and
35 (b) by adding at the end of the subsection the words "and so far as such fund is insufficient to meet any such claim, shall be paid out of the Consolidated Revenue Fund."

Roads

*Real Property (Amendment).**Roads included in certificates of title.*

13. Where, before the commencement of this Act, a road or part thereof bounding land the subject of a Crown grant, or reserved in a Crown grant, has been included within the boundaries of the land described in any certificate of title, and has not been specifically excepted from such certificate of title by express exception or notification mentioning such road, such certificate of title shall, so far as regards such road, or part thereof, be deemed for all purposes to have been properly issued, and to include the area of such road or part thereof.

Where roads are included in certificate of title.

This section shall bind the Crown.

14. (1) Whenever—

- (a) by the operation of any statute either directly or by reason of anything done in pursuance thereof; or
- (b) by the defeasance of any estate of any person registered as proprietor under the provisions of the Real Property Act, 1900,
- any land under the provisions of the said Act has or shall become vested in some person other than the registered proprietor either alone or jointly or in common with the registered proprietor or some such person has or shall become entitled to have any such land so vested, or the site or any part of the site of any closed road whether belonging to His Majesty the King or to any person has or shall become vested in the person registered as proprietor under the said Act of adjoining land, the Registrar-General may at the written request of a person in whom there has been such a vesting or who has become so entitled on such evidence as shall appear to the Registrar-General to be sufficient, and after such notice (if any) and to such person as the Registrar-General shall deem proper register the person in whom any such land or site or part thereof is vested or who has become so entitled as the proprietor of such estate therein as shall be appropriate, and for that purpose may make every such entry, cancellation, and correction in the register and issue every such certificate of title as shall appear to the Registrar-General to be necessary

Registrar-General may register as proprietor person entitled to land by operation of statute or by defeasance of estate.

Real Property (Amendment).

necessary or proper : Provided, however, that this section shall not apply to any case for which express provision is made in the said Act, or any other Act, and that such stamp duty and fees shall be payable on every request
5 under this section as would have been payable on a transfer, conveyance, or Crown grant as the case may be of the land or site or part thereof so vested.

(2) Every entry, cancellation, and correction made and every certificate of title issued by the
10 Registrar-General before the passing of this Act which might have been made or issued under the provisions of subsection one of this section if it had been passed before the making of such entry, cancellation, or correction, or the issue of such certificate of title shall be as valid and
15 effectual for all purposes as if this Act had been passed before the making of such entry, cancellation, or correction, or the issue of such certificate of title.

Real Property (Amendment) Bill.

SYNOPSIS OF PROPOSED AMENDMENTS AND EXPLANATORY NOTES.

Section 2.—Amendment of section 14 (1) of the Principal Act.

SECTION 14 (1) reads :—

Land alienated from the Crown in fee prior to the first day of January, one thousand eight hundred and sixty-three (whether such land shall constitute the whole or only part of the land included in any grant), may be brought under the provisions of this Act.

Under this subsection, only land granted prior to the Act could be brought under its provisions. This has been found to shut out from the benefits of the Act many titles which were perfectly sound, such, for instance, as those originating in—

- (a) a vesting by Statute of Crown land ;
- (b) a dedication by the Crown followed by statutory authority to sell (*e.g.*, the Sydney common land) ;
- (c) possession against the Crown sufficient to establish good title ;
- (d) a sale by the Railway Commissioners of surplus railway land formerly Crown land.

The amendment, which provides that land *not already under the Act* may be applied to be brought under its provisions, will remove this difficulty.

Section 3.—Amendment of section 17 (1) of the Principal Act (relating to applications to bring land under the Act).

Section 17 (1) reads :—

Upon the receipt of such application, the Registrar-General shall cause the title of the applicant to be examined and reported upon by the Examiners, and shall thereafter himself take the case into his consideration.

The provision that the Registrar-General shall cause the title of an applicant for a title under the Act to be examined and reported upon by the Examiners of Titles probably places an obligation upon the Examiners to carry their investigation back to the date of the grant in every case, which, in view of the Statutes of Limitations and other circumstances is frequently quite unnecessary. The amendment proposes an alteration which will in appropriate cases admit of the Registrar-General—who in any event has the final responsibility—limiting the period of investigation as the circumstances may justify.

Section 4.—Amendment of section 19 of the Principal Act (relating to applications to bring land under the Act).

The original section 19 provides that if it appears that any parties interested in any unsatisfied mortgage or beneficially interested are not parties to the application, or that the evidence of title is imperfect or that the applicant has required notice to be served personally upon any persons, the Registrar-General may reject the application or give certain notices and advertise the application, and shall appoint a time, not being less than two months nor more than two years, upon or after the expiration of which he may bring the land under the Act, unless forbidden by caveat. In effect, this section provides for the procedure to be observed in a case where the evidence of title may be considered to be imperfect. The procedure under section 18 is, however, much more simple and expeditious. It frequently happens that defects in title are of such a character that the probability of claims arising is practically negligible, and the amendment is intended to admit of such cases being dealt with under the procedure provided for by

section 18 if the Registrar-General considers this justified; and empowers him to impose a fee additional to the usual assurance fee of $\frac{1}{2}$ d. in the £. A somewhat similar provision is in force in Victoria (Act No. 2740, section 44). It should be noted that the acceptance of titles on imperfect evidence is provided for by the existing section 19, and that the amendment does not introduce or even extend this principle.

Section 5.—Amendment of section 56 of the Principal Act.

Section 56 relates to the giving of mortgages and encumbrances. Under the existing law a mortgage under the Act is merely a charge on the subject property and does not operate to pass the legal estate as a mortgage of land under the old system does. In consequence of this, a difficulty occurs in cases where it is desired to attach to the mortgaged land an easement over other land of the mortgagor. The purpose of the amendment is to enable mortgagees of land under the Act to obtain the benefits of any appurtenances which are necessary to the enjoyment of the land, as they would if the titles were held under the old system. The amendment will, therefore, remove an objection to mortgages of land under the Act which does not arise in the case of land not under the Act.

Section 6.—Amendment of sections 88 and 89 of the Principal Act (relating to powers of attorney under the Act).

The sections as amended would read:—

88. The registered proprietor of any land, estate, or interest under the provisions of this Act may authorise and appoint any person to act for him or on his behalf in respect to the transfer or other dealing with such land, estate, or interest in accordance with the provisions of this Act, by executing a power in any form heretofore in use for the like purpose, or in the form of the Twelfth or Thirteenth Schedules hereto, *provided that no instrument executed under a power of attorney shall be registered under this Act unless such power of attorney has been registered as provided for by the Conveyancing Act, 1919.*

89. The registered proprietor of any land in respect of which any power of attorney has been executed may, for the purpose of revoking such power, execute an instrument in the form of the Fourteenth Schedule hereto, or in any form heretofore in use for the like purpose.

Under the law as it stands powers of attorney under the Real Property Act are required to be entered in the Register Book which comprises the title of the land affected. The Conveyancing Act, 1919, section 163, now makes provision for the registration of powers of attorney, and the amendments proposed are intended to obviate the necessity for their entry on the Register Book and to make the one registration (under the Conveyancing Act) sufficient.

Sections 7 and 8.—Amendment of section 94 (3) (5) and (7) of the Principal Act.

Section 94 relates to applications for transmission consequent upon the death of a registered proprietor.

Subsection (1) provides that executors, administrators, &c., may apply to the Registrar-General in the form of the Schedule.

Subsection (2) provides that the applicant shall deposit certain evidence.

Subsection (3) (as it stands) provides that the Registrar-General, if advised by the Examiners, may dispense with certain evidence. The amendment proposed omits reference to the Examiners, and thus leaves the question of dispensing with such evidence with the Registrar-General.

Subsection (4) provides that the nature of all estates or interests held by other persons shall be indicated in the application, unless disclosed by some other instrument deposited or protected by caveat.

Subsection (5) as amended will read:—

‘5. The Registrar-General shall not be concerned in nor take notice of any such prior estates or interests unless they have *been* disclosed or referred to or protected as herein mentioned,’ a reference to the Examiners being omitted and the word “been” (omitted in the Principal Act) inserted.

Subsection (7) provides that the application may be made by an agent duly constituted by *general* power of attorney. The word “general” here has a restrictive effect and is omitted by the amendment.

While it is essential that the evidence in support of transmission applications should be examined by a properly qualified and trained legal officer, they are not usually of such a complex character as to render investigation by an officer with the status of Examiner of Titles essential. The amendments would permit of these cases being dealt with by qualified officers of lower status.

Section 9.—Amendment of section 95 of the Principal Act. (Also relating to Transmission Applications.)

Section 95 (1) provides that the Registrar-General shall refer the application to the Examiners for report and shall thereafter take the matter into consideration and either reject the application or cause notice to be published, or if advised by the Examiners dispense with the publication of notices. The amendment leaves the Registrar-General to take action without reference to the Examiners.

(2) Subsection (2) of section 95 provides for an interval of not less than one month between the publication of the notices and the registering of the Transmission, which, in practice, has been found cumbersome and unnecessary. The amendment proposes to leave the interval in the discretion of the Registrar-General.

(3) Subsection (6) of section 95 directs the Registrar-General to enter a caveat in certain cases. The power to enter a caveat exists under section 12 (e) of the Principal Act. Subsection (6) is, therefore, unnecessary and the amendment omits it.

Section 10.—Amendment of sections 121, 122 and 123 of the Principal Act.

Under sections 121, 122 and 123, as the law stands, a proprietor who is dissatisfied with the Department's decision in relation to his application to bring land under the Act, or to have any dealing registered or Certificate of Title issued, may take the matter to the Supreme Court in one-way or another, but at his own cost. Highly technical and intricate points frequently arise in the administration of the Act, and it is very desirable from the standpoint of the Department that the decision of the Court should be sought, but the fact that the person feeling aggrieved may, even if successful, have to pay all costs operates as a deterrent to his carrying the matter to the Court. It has been urged, moreover, that the Department is, at least, in a position to take advantage of this situation by raising objections of doubtful validity. The object sought to be attained by the amendment is summed up in the new section 123A, under which the question of costs is left in the discretion of the Court. In addition, references to the Examiners are proposed to be omitted and a reference to the Registrar-General substituted, consistently with the amendments proposed in the earlier sections.

Section 11.—Amendment of section 127 of the Principal Act.

The original section reads :—

Any person sustaining loss or damages through any omission, mistake, or misfeasance of the Registrar-General or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, or by the registration of any other person as proprietor of such land, or by any error, omission, or misdescription in any certificate of title or any entry or memorial in the register book, and who by the provisions of this Act is barred from bringing an action of ejectment or other action for the recovery of such land, estate, or interest may, in any case in which the remedy by action for recovery of damages as hereinbefore provided is inapplicable, bring an action against the Registrar-General as nominal defendant for recovery of damages.

This section makes provision for the recovery of damages by persons suffering loss or damage through errors or omissions of the Registrar-General or his officers. The amendment somewhat enlarges the remedies but limits them to cases where loss or damage results from negligent acts or defaults. This affords some safeguard against claims in cases where there has been contributory negligence or collusion, but, except in this respect, the amendment does not limit or prejudice the rights which any person might have had under the original section.

Section 12.—This section introduces entirely new procedure under the Real Property Act of this State.

On March 30, 1920, the Commonwealth wrote to the Premier asking that the State should consent to the Commonwealth being registered as proprietor of properties transferred to the Commonwealth under section 85 (1) of the Constitution. The letter suggested that the procedure set out in section 4 of the Victorian Transfer of Land Act, 1918, would be appropriate for this purpose. On June 30, 1920, legislative action was approved of by the Solicitor-General. Clause 12 was accordingly drafted upon the lines of section 4 of the Victorian Act. As the Commonwealth authorities desire the insertion of the clause it may be considered that it should remain part of the Bill. No interference with or prejudice to the rights of other persons is likely to arise.

Section 13.—Amendment of section 6 (2) of the Public Works and Closer Settlement Funds Act, 1906.

Section 6 (2) of the above Act reads:—

6. (2) The Assurance Fund aforesaid is closed, and any securities in which any part of such fund is invested may be sold or redeemed by the Treasurer, and any claims on that fund in pursuance of the Real Property Act, 1900, are charged on and shall be paid out of the Closer Settlement Fund.

The Assurance Fund under the Act having been transferred to the Closer Settlement Fund, all claims against the Assurance Fund are payable from the Closer Settlement Fund, but in the contingency of that fund being exhausted there would be no fund to meet claims, whilst under the Real Property Act this contingency was met by the provision—Section 129 (2)—that the Consolidated Revenue Fund should be liable.

Amendment (b) is intended to remedy what is clearly an omission.

Amendment (a) is purely formal.

Section 14.—Roads included in certificates of title.

In many of the earlier Crown grants roads which never had existence in fact were described as boundary roads or were reserved or excluded. The sites of the so-called roads were occupied and held with the adjacent land, and in the subdivision of the grants were ignored. Titles have been passed by the Department and certificates of title issued which included some portions of such "roads." If improperly included, the Crown rights could only be enforced at the expense of the Closer Settlement Fund, and it is desirable, therefore, that the titles issued by the Department should be validated. This is the object of the amendment.

The section as originally framed was limited to the county of Cumberland. Although cases outside the county of Cumberland are rare, the limitation upon further consideration is thought to be unnecessary, and it is proposed to omit the words "and lying within the county of Cumberland" from the clause.

Section 15.

Cases arise from time to time in which land or an estate in land under the Real Act becomes vested in some person (or some person becomes entitled to have land vested in him) otherwise than by the processes contemplated and provided for by the Act, *e.g.*, transfer, transmission, &c. The effect of the provision is shortly to give the Registrar-General power to give effect to vestings in such cases. A case in point arises in connection with the division under the Local Government Act of the old Dorrigge shire into two areas, reconstituted as the Dorrigge shire and the Nymboida shire. In the distribution of the property, &c., of the old area, the interest of the old Dorrigge shire in certain office premises was allocated to the new Nymboida shire, but, as the corporate existence of the old Dorrigge shire ceased on the creation of the new shires, there remained no means by which the offices could be legally vested in the Nymboida shire. Such a case as this is comparatively rare. More frequently action is necessary in matters coming under—

- (a) The Trustee Act of 1898, section 6 (2).
- (b) Friendly Societies Act, 1912, section 34.
- (c) Building and Co-operative Societies Act, 1901, section 24.
- (d) Public Trusts Act, 1897, section 3.
- (e) Trustee Act Amendment Act, 1902, section 5—divesting of estates of retiring trustees and vesting in continuing trustees.

The section would enable the Registrar-General to register the person entitled as proprietor, to make all necessary entries in the register book, and to issue certificates of title accordingly.

Subsection (2) is a validating clause. In the past an endeavour has been made to meet urgent cases by making entries in the register notwithstanding that there is no statutory authority for this course, and it is desirable that such action should be validated.

Legislative Council.

No. , 1920.

A BILL

To amend the Real Property Act, 1900, the Public Works and Closer Settlement Funds Act, 1906, and other Acts; and for other purposes.

[MR. SPROULE;—13 October, 1920.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of
5 the same, as follows:—

Preliminary.

1. This Act may be cited as the "Real Property Short title. (Amendment) Act, 1920."

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Amendments

Amendments of Real Property Act.

New subsection (1) of s. 14 of Real Property Act.

2. Subsection one of section fourteen of the Real Property Act, 1900, is repealed, and the following subsection substituted therefor :—

(1) Land not subject to the provisions of this Act may be brought under its provisions. 5

Amendment of s. 17 (1).

3. Subsection one of section seventeen of the said Act is amended by inserting after the word "applicant" the words "for such period as he considers sufficient."

Amendment of s. 19.

4. Section nineteen of the said Act is amended by adding the following proviso :—“Provided that the Registrar-General may, in his discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the applicant is imperfect, take the steps in the last preceding section provided, and may bring the land under the provisions of this Act; but in such case he may, notwithstanding section one hundred and nineteen, require payment to him of such special fee as he considers adequate in addition to that provided in the Nineteenth Schedule. 10 15 20

Amendment of s. 56.

5. Section fifty-six of the said Act is amended by adding at the end thereof the following subsections :—

(4) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered any easement over other land of which the mortgagor or encumbrancer is the registered proprietor and the grant or certificate of title of which is specified in the memorandum of mortgage or memorandum of encumbrance. 25 30

(5) When an easement is so expressed to be included the Registrar-General shall on registration of the memorandum of mortgage or memorandum of encumbrance enter a memorial of the instrument in which such easement is expressed to be included upon the folium of the register book constituted by the existing grant or certificate of title of the land over which the easement is expressed to be included. 35

(6)

5 (6) The easement so expressed to be included shall, when the memorandum of mortgage or memorandum of encumbrance is registered, be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment leasing or transfer by the mortgagee or encumbrancee or of foreclosure, and so that upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee such easement shall, 10 unless expressly excluded, be created by the order or decree for foreclosure or the lease or transfer and entry or registration thereof.

15 (7) Subsections four, five, and six of this section shall extend to instruments registered before as well as after the commencement of those subsections. Provided that it shall be optional only for the Registrar-General to comply with subsection five of this section if the instrument was registered before such commencement.

20 **6.** (1) Section eighty-eight of the said Act is amended by omitting all words following the word "heretc" and inserting the following: "Provided that no instrument executed under a power of attorney shall be registered under this Act unless such power of 25 attorney has been registered as provided for by the Conveyancing Act, 1919." Amendment of ss. 88 and 89.

(2) Section eighty-nine of the said Act is amended by omitting all words following the words "the like purpose."

30 **7.** Subsection three of section ninety-four of the said Act is repealed, and the following is substituted therefor:— New subsection (3) of s. 94.

35 (3) The Registrar-General may if he thinks fit, upon production of such other evidence of the death as appears to him sufficient, dispense with the said certificate of death.

8. (1) Subsection five of section ninety-four of the said Act is amended by omitting the words "and the examiners," and by inserting the word "been" after 40 the word "have." Amendment of subsection (5) of s. 94.

(2) Subsection seven of the same section is amended by omitting the word "general." **9.**

New sub-
section (1)
of s. 95.

9. (1) Subsection one of section ninety-five of the said Act is repealed, and the following substituted therefor:—

- (1) The Registrar-General may—
- (a) reject such application altogether; or 5
 - (b) cause notice thereof by advertisement, or the serving or posting of notices, to be given as he thinks fit; or
 - (c) dispense with the giving of any such notice. 10

Amendment
of subsection
(2).

(2) Subsection two of the same section is amended by omitting the words “not less than one month from the date of the advertisement in the Gazette.”

Repeal of
subsection (6).
Provisions as
to costs of
proceedings
under ss. 121,
122, and 123.

(3) Subsection six of the same section is repealed.

10. (1) Section one hundred and twenty-one of the said Act is amended as follows:—

- (a) By omitting from subsection one the words “at his own costs;” and
- (b) by omitting from subsection three the words “and all expenses attendant upon any such proceedings shall be borne and paid by the applicant or other person preferring such complaint, unless the judge or court shall certify that there were no probable grounds for such refusal or direction as aforesaid.” 25

(2) Section one hundred and twenty-two of the said Act is amended as follows:—

- (a) By omitting from subsection one the word “Examiners” and substituting the word “Registrar-General”; 30
- (b) by omitting from subsection two the words “Examiners and”;
- (c) by omitting from subsection three the words “Examiners and” and substituting the word “Registrar-General”; and 35
- (d) by omitting subsection four.

New s. 123.

(3) The following new section is inserted next after section one hundred and twenty-three of the said Act:—

123A. Upon any summons or proceeding under the three last preceding sections the court may make such

such order as to the costs and expenses of and attendant upon such summons or proceeding as it deems just, and all costs and expenses to be paid by the Registrar-General under such order shall be paid out of the closer settlement fund.

11. Section one hundred and twenty-seven of the said Act is repealed, and the following is inserted in its place:—

127. Any person sustaining loss or damage by the registration of any other person as proprietor of land or any estate or interest therein, or sustaining any loss or damage exclusively by any error, omission, or misdescription in any certificate of title, or any entry or memorial in the register-book, and who by the provisions of this Act is barred from bringing an action of ejectment or other action for the recovery of such land, estate, or interest, and any person sustaining loss or damage exclusively through any negligent act, negligent omission, or negligent mistake of the Registrar-General, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, may in any case in which the remedy by action for the recovery of damages as hereinbefore provided is inapplicable bring an action against the Registrar-General as nominal defendant for recovery of damages.

Action for damages against Registrar-General.

12. (1) Where property of the State of New South Wales used exclusively in connection with a department of the Public Service which is transferred to the Commonwealth consists of land registered under the Real Property Act, 1900, and the land has become vested in the Commonwealth under the provisions of the Commonwealth of Australia Constitution Act, upon application in that behalf made to the Registrar-General and the consent thereto of the Attorney-General for New South Wales, the Registrar-General shall register the Commonwealth as the proprietor of the land.

As to land vested in the Commonwealth under s. 85 of the Commonwealth of Australia Constitution Act. cf. Act No. 2,966 (Vict.).

(2) This section applies notwithstanding that the registered proprietor of the land is the King.

(3)

(3) This section applies whether the department is transferred to the Commonwealth before or after the commencement of this Act.

(4) In this section the expressions "property of the State," "used exclusively in connection with," "department of the Public Service," and "transferred to the Commonwealth," have the same meanings respectively as in section eighty-five of the Commonwealth of Australia Constitution Act. 5

Amendment of Public Works and Closer Settlement Funds Act. 10

Amendment of s. 6 (2) of Public Works and Closer Settlement Funds Act, 1906.

13. Subsection two of section six of the Public Works and Closer Settlement Funds Act, 1906, is amended as follows:—

(a) By inserting after "1900" the words "or any 15 Act amending it"; and

(b) by adding at the end of the subsection the words "and so far as such fund is insufficient to meet any such claim, shall be paid out of the Consolidated Revenue Fund." 20

Roads included in certificates of title.

Where roads are included in certificate of title.

14. Where, before the commencement of this Act, a road or part thereof bounding land the subject of a Crown grant, or reserved in a Crown grant, and lying within the county of Cumberland, has been included within the boundaries of the land described in any certificate of title, and has not been specifically excepted from such certificate of title by express exception or notification mentioning such road, such certificate of title shall, so far as regards such road, or part thereof, be deemed for all purposes to have been properly issued, and to include the area of such road or part thereof. 25 30

This section shall bind the Crown.

Legislative Council.

No. , 1920.

A BILL

To amend the Real Property Act, 1900, the Public Works and Closer Settlement Funds Act, 1906, and other Acts; and for other purposes.

[MR. SPROULE;—13 October, 1920.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

1. This Act may be cited as the "Real Property (Amendment) Act, 1920."

55775

c 64—A

Amendments

Amendments of Real Property Act.

New subsection (1) of s. 14 of Real Property Act. **2.** Subsection one of section fourteen of the Real Property Act, 1900, is repealed, and the following subsection substituted therefor :—

(1) Land not subject to the provisions of this Act may be brought under its provisions. 5

Amendment of s. 17 (1). **3.** Subsection one of section seventeen of the said Act is amended by inserting after the word “applicant” the words “for such period as he considers sufficient.”

Amendment of s. 19. **4.** Section nineteen of the said Act is amended by adding the following proviso :—“Provided that the Registrar-General may, in his discretion, notwithstanding that certain persons are not parties to the application, or that the evidence of title set forth by the applicant is imperfect, take the steps in the last preceding section provided, and may bring the land under the provisions of this Act ; but in such case he may, notwithstanding section one hundred and nineteen, require payment to him of such special fee as he considers adequate in addition to that provided in the Nineteenth Schedule. 10 15 20

Amendment of s. 56. **5.** Section fifty-six of the said Act is amended by adding at the end thereof the following subsections :—

(4) In a memorandum of mortgage or memorandum of encumbrance there may be expressed to be included as appurtenant to the land mortgaged or encumbered any easement over other land of which the mortgagor or encumbrancer is the registered proprietor and the grant or certificate of title of which is specified in the memorandum of mortgage or memorandum of encumbrance. 25 30

(5) When an easement is so expressed to be included the Registrar-General shall on registration of the memorandum of mortgage or memorandum of encumbrance enter a memorial of the instrument in which such easement is expressed to be included upon the folium of the register book constituted by the existing grant or certificate of title of the land over which the easement is expressed to be included. 35

(6)

5 (6) The easement so expressed to be included shall, when the memorandum of mortgage or memorandum of encumbrance is registered, be deemed to be an easement appurtenant to the land mortgaged or encumbered for the purpose of enjoyment leasing or transfer by the mortgagee or encumbrancee or of foreclosure, and so that upon foreclosure in favour of, or lease or transfer by, the mortgagee or encumbrancee such easement shall, unless expressly excluded, be created by the order or decree for foreclosure or the lease or transfer and entry or registration thereof.

10 (7) Subsections four, five, and six of this section shall extend to instruments registered before as well as after the commencement of those subsections. Provided that it shall be optional only for the Registrar-General to comply with subsection five of this section if the instrument was registered before such commencement.

15 20 **6.** (1) Section eighty-eight of the said Act is amended by omitting all words following the word "heretc" and inserting the following: "Provided that no instrument executed under a power of attorney shall be registered under this Act unless such power of attorney has been registered as provided for by the Conveyancing Act, 1919."

Amendment of ss. 88 and 89.

(2) Section eighty-nine of the said Act is amended by omitting all words following the words "the like purpose."

25 30 **7.** Subsection three of section ninety-four of the said Act is repealed, and the following is substituted therefor:—

New subsection (3) of s. 94.

35 (3) The Registrar-General may if he thinks fit, upon production of such other evidence of the death as appears to him sufficient, dispense with the said certificate of death.

40 **8.** (1) Subsection five of section ninety-four of the said Act is amended by omitting the words "and the examiners," and by inserting the word "been" after the word "have."

Amendment of subsection (5) of s. 94.

(2) Subsection seven of the same section is amended by omitting the word "general."

9.

New sub-
section (1)
of s. 95.

9. (1) Subsection one of section ninety-five of the said Act is repealed, and the following substituted therefor:—

- (1) The Registrar-General may—
- (a) reject such application altogether; or 5
 - (b) cause notice thereof by advertisement, or the serving or posting of notices, to be given as he thinks fit; or
 - (c) dispense with the giving of any such notice. 10

Amendment
of subsection
(2).

(2) Subsection two of the same section is amended by omitting the words “not less than one month from the date of the advertisement in the Gazette.”

Repeal of
subsection (6).
Provisions as
to costs of
proceedings
under ss. 121,
122, and 123.

(3) Subsection six of the same section is repealed.

10. (1) Section one hundred and twenty-one of the said Act is amended as follows:— 15

- (a) By omitting from subsection one the words “at his own costs;” and
- (b) by omitting from subsection three the words “and all expenses attendant upon any such 20 proceedings shall be borne and paid by the applicant or other person preferring such complaint, unless the judge or court shall certify that there were no probable grounds for such refusal or direction as aforesaid.” 25

(2) Section one hundred and twenty-two of the said Act is amended as follows:—

- (a) By omitting from subsection one the word “Examiners” and substituting the word “Registrar-General”; 30
- (b) by omitting from subsection two the words “Examiners and”; 35
- (c) by omitting from subsection three the words “Examiners and” and substituting the word “Registrar-General”; and
- (d) by omitting subsection four.

New s. 123.

(3) The following new section is inserted next after section one hundred and twenty-three of the said Act:—

123A. Upon any summons or proceeding under 40 the three last preceding sections the court may make such

such order as to the costs and expenses of and attendant upon such summons or proceeding as it deems just, and all costs and expenses to be paid by the Registrar-General under such order shall be paid out of the closer settlement fund.

11. Section one hundred and twenty-seven of the said Act is repealed, and the following is inserted in its place:—

127. Any person sustaining loss or damage by the registration of any other person as proprietor of land or any estate or interest therein, or sustaining any loss or damage exclusively by any error, omission, or misdescription in any certificate of title, or any entry or memorial in the register-book, and who by the provisions of this Act is barred from bringing an action of ejectment or other action for the recovery of such land, estate, or interest, and any person sustaining loss or damage exclusively through any negligent act, negligent omission, or negligent mistake of the Registrar-General, or any of his officers or clerks in the execution of their respective duties under the provisions of this Act, may in any case in which the remedy by action for the recovery of damages as hereinbefore provided is inapplicable bring an action against the Registrar-General as nominal defendant for recovery of damages.

Action for damages against Registrar-General.

12. (1) Where property of the State of New South Wales used exclusively in connection with a department of the Public Service which is transferred to the Commonwealth consists of land registered under the Real Property Act, 1900, and the land has become vested in the Commonwealth under the provisions of the Commonwealth of Australia Constitution Act, upon application in that behalf made to the Registrar-General and the consent thereto of the Attorney-General for New South Wales, the Registrar-General shall register the Commonwealth as the proprietor of the land.

As to land vested in the Commonwealth under s. 85 of the Commonwealth of Australia Constitution Act.
cf. Act No. 2,966 (Vict.).

(2) This section applies notwithstanding that the registered proprietor of the land is the King.

(3)

(3) This section applies whether the department is transferred to the Commonwealth before or after the commencement of this Act.

(4) In this section the expressions "property of the State," "used exclusively in connection with," "department of the Public Service," and "transferred to the Commonwealth," have the same meanings respectively as in section eighty-five of the Commonwealth of Australia Constitution Act.

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Amendment of s. 6 (2) of Public Works and Closer Settlement Funds Act, 1906.

13. Subsection two of section six of the Public Works and Closer Settlement Funds Act, 1906, is amended as follows:—

(a) By inserting after "1900" the words "or any Act amending it"; and

(b) by adding at the end of the subsection the words "and so far as such fund is insufficient to meet any such claim, shall be paid out of the Consolidated Revenue Fund."

Roads included in certificates of title.

Where roads are included in certificate of title.

14. Where, before the commencement of this Act, a road or part thereof bounding land the subject of a Crown grant, or reserved in a Crown grant, and lying within the county of Cumberland, has been included within the boundaries of the land described in any certificate of title, and has not been specifically excepted from such certificate of title by express exception or notification mentioning such road, such certificate of title shall, so far as regards such road, or part thereof, be deemed for all purposes to have been properly issued, and to include the area of such road or part thereof.

This section shall bind the Crown.