

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

I. P. K. VIDLER,

Clerk of the Legislative Assembly.

Legislative Assembly Chamber,

Sydney, 24 February, 1972.

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. , 1972.

An Act to amend the law of property and to simplify and improve the practice of conveyancing; to make provision with respect to the interpretation of the word "brick" in restrictive building covenants; to make certain provisions with respect to options in leases; to make further provision with respect to the registration of plans; for these and other purposes to amend the Conveyancing Act, 1919, the Trustee Act, 1925, and the Real Property Act, 1900; and for purposes connected therewith.

BE

Conveyancing (Amendment).

BE it enacted by the Queen'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 : —

1. (1) This Act may be cited as the "Conveyancing (Amendment) Act, 1972".

(2) The Conveyancing Act, 1919, is in this Act referred to as the Principal Act.

2. The Principal Act is amended—

(a) (i) by inserting in section two at the end of the matter relating to Part VIII the following new matter :—

Amendment of Act No. 6, 1919. Sec. 2. (Division of Act.)

DIVISION 4.—*Options in leases*—ss. 133C–133G.

(ii) by omitting from the matter relating to Part XXIII the matter relating to Division 2.

(b) by omitting from subsection three of section six the word "instruments" and by inserting in lieu thereof the word "dealings".

Sec. 6. (Application to Real Property Act, 1900, and Crown Lands Acts.)

3. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part I. (Interpretation.)

(a) by omitting from the definition of "Bankruptcy" in subsection one of section seven the words "under any Act heretofore or for the time being in force" and by inserting in lieu thereof the words "before or after the commencement of the Conveyancing (Amendment) Act, 1972";

Sec. 7. (Interpretation.)

(b)

Conveyancing (Amendment).

- (b) by omitting from the same definition the figures "1899" and by inserting in lieu thereof the figures "1961";
- 5 (c) by inserting in the same subsection next after the definition of "Court" the following new definition :—
- "Dealing" has the same meaning as it has in the Real Property Act, 1900.
- 10 (d) by omitting from the definition of "Deed" in the same subsection the words "an instrument" and by inserting in lieu thereof the words "a dealing";
- (e) by omitting from the same subsection the definition of "Insane person," "Insane patient," and "Incapable person";
- 15 (f) by inserting in the same subsection next after the definition of "Land under the provisions of the Real Property Act, 1900," the following new definition :—
- 20 "Mental disability" means the legal disability by reason of which the property of a person subject thereto may, pursuant to the law from time to time in force with respect to mental health, be committed to the management and care of another person.
- 25 (g) by omitting from the same subsection the definition of "Trust corporation" and by inserting in lieu thereof the following definition :—
- 30 "Trust corporation" means the Public Trustee or a trustee company or The Official Receiver in Bankruptcy or the trustee in whom is vested the property of a bankrupt.

Conveyancing (Amendment).

4. The Principal Act is further amended—

Further amendment of Act No. 6, 1919.

Part II.
(General Rules affecting Property.)Sec. 19A.
(Estates tail—further provisions.)

5 (a) (i) by omitting from subsection one of section 19A the words “commencement of the Limitation Act, 1969” and by inserting in lieu thereof the words “first day of January, one thousand nine hundred and seventy-one”;

10 (ii) by omitting from subsection three of the same section the words “the prescribed application to make all such entries in the register book” and by inserting in lieu thereof the words “application in the form approved under that Act to make all such recordings in the Register kept under that Act”;

15 (b) by inserting at the end of section twenty-three the following new subsection :—

Sec. 23.
(Dealings with land of undischarged bankrupt.)

20 (4) An order affecting the title to any land (not being land under the provisions of the Real Property Act, 1900) made under the Bankruptcy Act, 1898, is void as against a person who, after the commencement of the Conveyancing (Amendment) Act, 1972, and without notice of the order, purchases land from a person whose title to the land is affected by the order, unless the order is registered in the register of causes, writs, and orders affecting land.

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(c) by omitting paragraph (b) of subsection two of section 23B and by inserting in lieu thereof the following paragraph :—

Sec. 23B.
(Assurances of land to be by deed.)

30 (b) a disclaimer made in accordance with any law relating to bankruptcy in force before or after the commencement of the Conveyancing (Amendment) Act, 1972, or not required to be evidenced in writing;

(d)

Conveyancing (Amendment).

- (d) by omitting subsection five of section twenty-eight and by inserting in lieu thereof the following subsection :—
- (5) Where any such power is exercisable by a dealing to be registered under the Real Property Act, 1900, the power may be released or disclaimed by a dealing in the form approved under that Act and such a dealing may be registered under that Act.
- (e) by omitting from paragraph (b) of subsection one of section thirty-one the word "hereof" and by inserting in lieu thereof the words "of paragraph (a) of this subsection".

Sec. 28.
(Release
and
disclaimer
of powers.)

Sec. 31.
(Restriction
on directions
for accumu-
lation of
income.)

5. The Principal Act is further amended—

Further
amendment
of Act No.
6, 1919.
Part III.
(General
Rules
Relating to
Deeds.)

- (a) by omitting from subsection one of section forty-one the words "an instrument" where secondly occurring and by inserting in lieu thereof the words "a dealing";
- (b) by omitting from the same subsection the word "instrument" where thirdly occurring and by inserting in lieu thereof the word "dealing".

Sec. 41.
(Mode of
exercise of
powers.)

6. The Principal Act is further amended—

Further
amendment
of Act No.
6, 1919.
Part IV.
(Sales and
other
Trans-
actions.)

(a)

Conveyancing (Amendment).

- (a) by inserting in paragraph (e) of subsection two of section fifty-three after the word "Registrar-General" the words "pursuant to section sixty-four of this Act"; Sec. 53.
(Rules for regulating obligations and rights of vendors and purchasers.)
- 5 (b) (i) by omitting from subsection one of section fifty-seven the word "instrument" where firstly, thirdly and fourthly occurring and by inserting in lieu thereof the word "dealing"; Sec. 57.
(Conditions of sale of land under the provisions of the Real Property Act, 1900.)
- 10 (ii) by omitting from paragraph (b) of the same subsection the word "register" and by inserting in lieu thereof the words "Register kept under that Act";
- (c) by omitting section sixty-two; Sec. 62.
(Mode of negating identity of bankrupts.)
- 15 (d) by inserting at the end of section sixty-four the following new subsection :— Sec. 64.
(Satisfaction of covenants to produce deeds.)
- 20 (2) Where the Registrar-General has—
 - (a) pursuant to subsection five of section seventeen of the Real Property Act, 1900, or pursuant to subsection two of section 31A of that Act, issued a certificate or certificates of title; or
 - 25 (b) pursuant to subsection four of section 28M of that Act, cancelled the caution or cautions recorded on any qualified certificate or certificates of title,
- 30 for the whole of the land affected by a document deposited pursuant to subsection one of this section the Registrar-General may, notwithstanding subsection one of this section but subject to section fourteen of the Archives Act, 1960, destroy that document.

(A)

(e)

Conveyancing (Amendment).

- (e) by omitting from subsection five of section sixty-six the words "entries in the register-book" and by inserting in lieu thereof the words "recordings in the Register kept under that Act"; Sec. 66.
(Provision by court for incumbrances and sale freed therefrom.)
- 5 (f) (i) by omitting from subsection two of section 66D the word "has" and by inserting in lieu thereof the word "had"; Sec. 66D.
(Powers of management, &c., conferred on trustees for sale.)
- 10 (ii) by omitting paragraph (a) of subsection four of the same section and by inserting in lieu thereof the following paragraph :—
- (a) If a share in the net proceeds belongs to a person under mental disability, the consent of the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, of the court, shall be sufficient to protect the trustees for sale.
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- 20 (g) by omitting paragraph (b) of subsection five of section 66G and by inserting in lieu thereof the following paragraph :— Sec. 66G.
(Statutory trusts for sale or partition of property held in co-ownership.)
- (b) Where any of the co-owners is a person under mental disability, the notice shall be served on the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, on such officer of the court as may be prescribed by rules of court.
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7. (1) The Principal Act is further amended— Further amendment of Act No. 6, 1919.
Part VI.
(Covenants and Powers.)
- (iv) (a)

Conveyancing (Amendment).

- (a) (i) by omitting from subsection one of section seventy-eight the word "conveys" where firstly occurring and by inserting in lieu thereof the words "is therein expressed to convey";
- 5 (ii) by inserting in the same subsection after the words "conveyance is" where firstly, secondly and thirdly occurring the words "expressed to be";
- 10 (iii) by omitting from paragraph (A) of the same subsection the words "In a conveyance for valuable consideration other than a mortgage the following covenant, by a person who conveys and is expressed to convey as beneficial owner" and by inserting in lieu thereof the words "In a conveyance (other than a mortgage) for valuable consideration executed after the first day of July, one thousand nine hundred and twenty, and before the commencement of the Conveyancing (Amendment) Act, 1972, the following covenant by a person therein expressed to convey as beneficial owner and in a conveyance (other than a mortgage and whether or not for valuable consideration) executed after that commencement the following covenant by a person therein expressed to convey as beneficial owner";
- 15 20 25
- (iv) by omitting from the same paragraph the words "who so conveys" wherever occurring and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
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- (v) by omitting from the same paragraph the word "conveying" wherever occurring and by inserting in lieu thereof the words "therein expressed to be conveying";
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Sec. 78.
(Covenants for title to be implied.)

(vi)

Conveyancing (Amendment).

- 5 (vi) by omitting from the same paragraph the words "person to whom the conveyance is made" and by inserting in lieu thereof the words "person to whom the conveyance is expressed to be made";
- 10 (vii) by omitting from paragraph (B) of the same subsection the words "In a conveyance of leasehold property for valuable consideration other than a mortgage the following further covenant, by a person who conveys and is expressed to convey as beneficial owner" and by inserting in lieu thereof the words "In a conveyance (other than a mortgage) of leasehold property for valuable consideration executed after the first day of July, one thousand nine hundred and twenty, and before the commencement of the Conveyancing (Amendment) Act, 1972, the following further covenant by a person therein expressed to convey as beneficial owner and in such a conveyance (other than a mortgage and whether or not for valuable consideration) executed after that commencement the following further covenant by a person therein expressed to convey as beneficial owner";
- 20 (viii) by omitting from the same paragraph the words "who so conveys" and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
- 25 (ix) by omitting from the same paragraph the word "conveyed" wherever occurring and by inserting in lieu thereof the words "expressed to be conveyed";
- 30 (x) by omitting from paragraph (C) of the same subsection the words "In a deed by way of mortgage the following covenant, by a person who conveys and is expressed to convey as

beneficial

Conveyancing (Amendment).

- beneficial owner" and by inserting in lieu thereof the words "In a conveyance by way of mortgage executed after the first day of July, one thousand nine hundred and twenty, the following covenant by a person therein expressed to convey as beneficial owner";
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- (xi) by omitting from the same paragraph the words "who so conveys" wherever occurring and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
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- (xii) by omitting from the same paragraph the word "conveying" where firstly, secondly and thirdly occurring and by inserting in lieu thereof the words "who executes the conveyance and is therein expressed to be conveying";
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- (xiii) by omitting from the same paragraph the words "subject-matter of conveyance" wherever occurring and by inserting in lieu thereof the words "subject-matter expressed to be conveyed";
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- (xiv) by omitting from the same paragraph the words "so conveying" and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
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- (xv) by omitting from the same paragraph the words "conveyance is made" and by inserting in lieu thereof the words "conveyance is expressed to be made";
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- (xvi) by omitting from paragraph (D) of the same subsection the words "In a conveyance by way of mortgage of leasehold property the following further covenant, by a person who conveys

and

Conveyancing (Amendment).

5 and who is expressed to convey as beneficial owner" and by inserting in lieu thereof the words "In a conveyance by way of mortgage of leasehold property executed after the first day of July, one thousand nine hundred and twenty, the following further covenant by a person therein expressed to convey as beneficial owner";

10 (xvii) by inserting in the same paragraph after the word "land" where secondly occurring the words "expressed to be";

15 (xviii) by omitting from the same paragraph the words "so conveying" and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";

(xix) by omitting from the same paragraph the words "conveyance is made" and by inserting in lieu thereof the words "conveyance is expressed to be made";

20 (xx) by omitting from paragraph (E) of the same subsection the words "In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor" and by inserting in lieu thereof the words "In a conveyance by way of settlement executed after the first day of July, one thousand nine hundred and twenty, the following covenant by a person therein expressed to convey as settlor";

25 (xxi) by omitting from the same paragraph the words "so conveying" and by inserting in lieu thereof the words "therein expressed to convey as settlor";

(xxii)

(xxii)

Conveyancing (Amendment).

- (xxii) by omitting from the same paragraph the words "of the conveyance" and by inserting in lieu thereof the words "expressed to be conveyed";
- 5 (xxiii) by omitting from the same paragraph the words "conveyance is made" and by inserting in lieu thereof the words "conveyance is expressed to be made";
- 10 (xxiv) by omitting from paragraph (F) of the same subsection the words "In any conveyance the following covenant by every person who conveys, and is expressed to convey," and by inserting in lieu thereof the words "In a conveyance executed after the first day of
- 15 July, one thousand nine hundred and twenty, the following covenant by every person therein expressed to convey";
- (xxv) by omitting from the same paragraph the words "or mortgagee, or as the executor or
- 20 administrator of a deceased person, or as Master in Lunacy, or as committee or manager of the estate of any insane or incapable person within the meaning of the Lunacy Act of
- 25 1898" and by inserting in lieu thereof the words "mortgagee, executor or administrator, or in a specified capacity for the time being apt to describe a person having the management and care of the property of a person under mental disability";
- 30 (xxvi) by omitting from the same paragraph the words "so conveying" and by inserting in lieu thereof the words "therein so expressed to convey";
- 35 (xxvii) by omitting from the same paragraph the words "of the conveyance" and by inserting in lieu thereof the words "expressed to be conveyed";

(xxviii)

Conveyancing (Amendment).

(xxviii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

5 (2) Where, in a conveyance executed after the first day of July, one thousand nine hundred and twenty—

(a) a person is therein expressed to be conveying at the direction of another person; and

10 (b) that other person is therein expressed to have given that direction as beneficial owner,

15 the same covenant by that other person shall be implied in the conveyance as would be implied therein by the operation of subsection one of this section if that other person had been expressed therein to convey as beneficial owner.

20 (xxix) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

25 (3) Where a conveyance executed after the first day of July, one thousand nine hundred and twenty, is a conveyance by a wife of property not held by her as her separate property and she and her husband are in the conveyance each expressed to convey as beneficial owner, the same covenant by the husband shall be implied in the conveyance as would be implied if he were therein expressed to have, as beneficial owner, directed his wife to convey.

(xxx)

Conveyancing (Amendment).

(xxx) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

5 (4) A covenant by a person is not implied by the operation of this section in a conveyance executed after the first day of July, one thousand nine hundred and twenty, where—

10 (a) that person is not therein expressed to be conveying as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as executor or administrator, or in a specified capacity for the time being apt to describe a person having the management and care of the property of a person under mental disability, or under an order of the court; or

15 (b) the conveyance is expressed to be at the direction of that person, but he—
20 (i) did not execute the conveyance; or
(ii) is not therein expressed to have given the direction as beneficial owner.

25 (xxx) by omitting subsection six of the same section;

(b) by omitting from subsection two of section eighty-three the word "instruments" and by inserting in lieu thereof the word "dealings"; Sec. 83. (Implied covenants,— with mortgagees.)

30 (c) by omitting subsection three of section eighty-eight and by inserting in lieu thereof the following subsection :— Sec. 88. (Limitation of enforceability of easements and restrictions of user of land.)

35 (3) This section applies to land under the provisions of the Real Property Act, 1900, and in respect thereof—

(a) the Registrar-General shall have, and shall be deemed always to have had, power to record

(xxx)

Conveyancing (Amendment).

5 record a restriction referred to in subsection one of this section upon the folio of the Register kept under that Act that relates to the land subject to the burden of the restriction, to record in like manner any dealing purporting to affect the operation of a restriction so recorded and to record in like manner any release, variation or modification of the restriction;

10 (b) a recording in the Register kept under that Act of any such restriction shall not give the restriction any greater operation than it has under the dealing creating it; and

15 (c) a restriction so recorded is an interest within the meaning of section forty-two of that Act.

(d) by omitting from subsection three of section 88B the word "notify" and by inserting in lieu thereof the word "record"; Sec. 88B. (Creation of easements and restrictions as to user by plans of subdivision.)

20 (e) by inserting next after section 88B the following new sections:— New secs. 88c and 88d.

25 88c. (1) In this section "restriction" means a restriction as to the user of land that arose, under covenant or otherwise, before the commencement of the Conveyancing (Amendment) Act, 1972, or so arises after that commencement, the benefit of which is intended to be annexed to other land. Restrictions relating to brick construction.

(2) For the purposes of this section—

30 (a) a wall of a building or structure is of brick veneer construction in so far as the outer part of that wall consists of brick having a thickness of at least three inches and the inner part of that wall consists of a material other than brick; and

(b)

Conveyancing (Amendment).

(b) a building or structure is of brick veneer construction if its external walls are of brick veneer construction, or partly of brick construction and partly of brick veneer construction, whether or not its other walls are so constructed.

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(3) To the extent to which a restriction—

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(a) does not operate to prohibit the erection on land to which the restriction relates of a building or structure having walls of brick; and

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(b) does not exclude the operation of this section by specific reference thereto or does not, by the express use in the instrument under which it arises of terms appropriate to describe brick veneer construction, operate to prohibit the use of that form of construction in a building or structure to be erected on that land,

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it is not a breach of the restriction to erect on that land a building or structure of brick veneer construction.

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(4) This section applies to and in respect of a building or structure erected before or after the commencement of the Conveyancing (Amendment) Act, 1972, and so applies as if a building or structure erected before that commencement had been erected after that commencement.

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88D. (1) In this section—

“prescribed authority” means—

(a) the Crown; or

(b) a public or local authority constituted by an Act;

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“prescribed land” means land vested in a prescribed authority.

Restriction
on user of
certain land.

(2)

Conveyancing (Amendment).

- (2) Where he considers it to be in the public interest so to do, the Governor may restrict the user of prescribed land by an order published in the Gazette that—
- 5 (a) describes the land in a manner enabling it to be identified and specifies, in the case of land under the provisions of the Real Property Act, 1900, the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;
- 10 (b) specifies the terms of the restriction; and
- (c) specifies the prescribed authority in which the land is vested.
- 15 (3) Subject to subsection seven of this section, upon lodgment in a form approved by the Registrar-General of a copy of an order published under subsection two of this section, the Registrar-General shall—
- 20 (a) where the land to which the order relates is land under the provisions of the Real Property Act, 1900—record the restriction on the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;
- 25 (b) in any other case—cause the copy of the order to be registered in the General Registry of Deeds kept under the Registration of Deeds Act, 1897.
- 30 (4) For the purposes of the Registration of Deeds Act, 1897, a copy of an order registered pursuant to paragraph (b) of subsection three of this section shall be deemed to be a registration copy of an instrument duly registered under that Act.
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Conveyancing (Amendment).

(5) A restriction referred to in an order published under subsection two of this section—

(a) has no force or effect—

5 (i) unless it is recorded, or the copy of the order is registered, pursuant to subsection three of this section; and

10 (ii) unless, at the time when that recording or registration is effected, the land to which the restriction relates is vested in the prescribed authority specified in the order,

and subject thereto takes effect upon being so recorded or registered; and

15 (b) when recorded as provided by paragraph (a) of subsection three of this section, has no greater operation than it has under the order that relates to it and under this section.

20 (6) Where a restriction is recorded pursuant to paragraph (a) of subsection three of this section, the title of the registered proprietor of land to which the restriction relates is, for the purposes of section forty-two of the Real Property Act, 1900, subject to the restriction.

25 (7) Where the Registrar-General is satisfied that, by the operation of subparagraph (ii) of paragraph (a) of subsection five of this section, a restriction referred to in an order published under subsection two of this section would have no force or effect if recorded under subsection three of this section or if a copy of the order in which the restriction is referred to is registered under that subsection, he shall, where the land described in

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(3) the

Conveyancing (Amendment).

5 the order is land under the provisions of the Real Property Act, 1900, and may, in any other case, refuse to record the restriction or, as the case may require, to register a copy of the order in which the restriction is referred to.

10 (8) Subject to subsection nine of this section, where a restriction takes effect under this section the prescribed authority specified in the order by which the restriction was imposed may enforce the restriction against a person claiming an interest in the land described in the order as if, upon the acquisition by that person of that interest, he had entered into a binding covenant with that prescribed authority to observe the restriction.

15 (9) Subsection eight of this section does not authorise enforcement against a person claiming an interest in land of a restriction on the user of the land imposed by this section where that person—

20 (a) is a person who, at the time the restriction took effect, had acquired that interest or had acquired or become entitled to an option to purchase that interest; or

25 (b) is a person claiming that interest through or under a person referred to in paragraph (a) of this subsection.

30 (10) The powers of the Governor to alter or vary an order made by him do not extend to an order published under subsection two of this section.

35 (11) The powers of the Governor to rescind or revoke an order published under subsection two of this section may be exercised in relation to the whole of the land described in the order or any part thereof.

(12)

Conveyancing (Amendment).

5 (12) Where an order rescinding or revoking an order published under subsection two of this section is published in the Gazette, the prescribed authority specified in the order rescinded or
 10 of such a copy so lodged as if it were a copy of an order published under subsection two of this section.

- 15 (f) (i) by inserting in subsection seven of section eighty-nine after the word "section" the words "affecting land not under the provisions of the Real Property Act, 1900,";
 (ii) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection :—

20 (8) This section applies to land under the provisions of the Real Property Act, 1900, and the Registrar-General shall, on application made in the form approved under that Act, make all necessary recordings in the Register kept under that Act for giving effect
 25 to the order.

30 For the purposes of this subsection, a grant, certificate of title or duplicate registered dealing that is not in the possession of the Registrar-General shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of the Real Property Act, 1900.

- 35 (iii) by omitting from subsection nine of the same section the words "other land" and by inserting in lieu thereof the words "land which is not under the provisions of the Real Property Act, 1900,".

Conveyancing (Amendment).

(2) The amendments made by paragraph (a) of subsection one of this section do not apply to or in respect of conveyance dated the twenty-ninth day of September, one thousand nine hundred and sixty, from Bankstown Finance and Investment Co. Pty. Limited to Coronet Homes Pty. Limited, registered under the Registration of Deeds Act, 1897, as book 2548 number 523.

8. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part VII. (Mortgages.)

(a) by omitting subsection six of section ninety-one and by inserting in lieu thereof the following subsection :—

Sec. 91. (Indorsements on mortgages.)

(6) Subject to the memorandum referred to in subsection one of this section being in or to the effect of an approved form within the meaning of the Real Property Act, 1900, paragraphs (b), (c) and (d) of that subsection apply to mortgages under that Act and, upon lodgment of such a memorandum for registration, the Registrar-General shall make such recordings in the Register kept under that Act as may be necessary to give effect to the memorandum.

(b) (i) by omitting subsection one of section ninety-eight and by inserting in lieu thereof the following subsections :—

Sec. 98. (Facilitation of redemption in case of absent or unknown mortgagees.)

(1) Where land is subject to a mortgage and the person empowered to reconvey the land or, where the land is under the provisions of the Real Property Act, 1900, to execute in respect thereof a discharge referred to in section sixty-five of that Act, is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who that person is, the court may, upon the application of the person for

for

Conveyancing (Amendment).

5 for the time being entitled to redeem the mortgaged land, determine in such manner as the court thinks fit whether or not all amounts due under the mortgage have been paid and, if not, the amount thereof outstanding.

10 (1A) Where the court has made a determination under subsection one of this section in relation to a mortgage, the mortgagee is, to the extent provided by this section, liable to pay the costs of the applicant incurred in obtaining the determination, any rule of law or stipulation to the contrary notwithstanding.

15 (1B) The amount of costs that a mortgagee is liable under subsection (1A) of this section to pay in respect of a determination under subsection one of this section is the amount by which—

20 (a) the amount certified by the court when making the determination as reasonable costs of the applicant incurred in obtaining the determination, exceeds—

25 (b) the amount of remuneration that would have been payable by the mortgagee pursuant to the general order for the time being in force under section two hundred and six of this Act if—

30 (i) a discharge of the mortgage had been executed at the time the determination was made; and

35 (ii) that general order had been applicable in respect of that discharge of mortgage.

(1C)

Conveyancing (Amendment).

5 (1C) The amount of costs that a mortgagee is liable, under subsection (1A) of this section, to pay to an applicant shall, except to the extent that it is extinguished or reduced by the operation of this section, be deemed to be a specialty debt recoverable by the applicant and incurred at the time of the making of the determination to which the costs relate.

10 (1D) Where the court determines under subsection one of this section that the amount due under a mortgage has not been repaid and the amount thereof determined by the court to be outstanding exceeds the amount of costs calculated under subsection (1B) of this section in respect of the determination, the applicant for the determination may pay into court the difference between the amount so determined and the amount so calculated and, upon the amount of that difference being so paid—

20 (a) the amount due under the mortgage at the time of the payment into court shall be deemed to have been reduced by the amount so calculated and by the amount paid into court; and

25 (b) the debt owing under subsection (1C) of this section by the mortgagee to the applicant shall be deemed to have been extinguished.

30 (1E) Where the court determines under subsection one of this section that the amount due under a mortgage has not been repaid and the amount thereof determined by the court to be outstanding is equal to or less than the amount of costs calculated under subsection (1B) of this section in respect of the determination—

35 (a)

Conveyancing (Amendment).

- (a) the amount due under the mortgage at the time of the determination shall be deemed to have been reduced by the amount so determined;
- 5 (b) the debt owing under subsection (1C) of this section by the mortgagee to the applicant for the determination shall be deemed to have been reduced by the amount so determined; and
- 10 (c) for the purposes of subsection (1F) of this section, the court shall be deemed to have determined that the amount due under the mortgage has been repaid.
- 15 (1F) Where—
 - (a) the court determines under this section that the amount due under a mortgage has been repaid, whether by the operation of paragraph (c) of subsection (1E) of this section or otherwise; or
 - 20 (b) payment into court is made under subsection (1D) of this section,

25 an officer of the court prescribed by rules of court may give a certificate to the effect that this section has been complied with in relation to the mortgage in respect of which the determination was made or the money paid into court.
- 30 (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection : —

35 (2) In favour of a purchaser of land comprised in a mortgage referred to in a certificate given under subsection (1F) of this section, the certificate operates as a discharge of the land from the amount due under the mortgage, and

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and as a deed of conveyance, in the same manner as a memorandum of discharge operates under subsection three of section ninety-one of this Act.

5 (iii) by omitting from subsection three of the same section the words "the amount so paid into court" and by inserting in lieu thereof the words "an amount paid into court under subsection (1D) of this section";

10 (iv) by inserting next after the same subsection the following new subsection :—

15 (3A) A determination by the court under this section with respect to a mortgage is not, as between persons referred to in subsection one of this section, conclusive as to—

(a) whether or not an amount is due under the mortgage at the time of the determination; or

20 (b) whether the amount determined by the court to be due under the mortgage is the amount so due at the time of the determination,

25 and, except to the extent of the operation of paragraph (a) of subsections (1D) and (1E), and of subsection two, of this section, that determination does not prejudice any right conferred by the mortgage for the recovery of an amount due thereunder.

30 (v) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

35 (4) This section, subsection two excepted, applies to and in respect of mortgages under the Real Property Act, 1900, and, upon production to the Registrar-General of a certificate under subsection (1F) of this section that relates to such a mortgage, the Registrar-General—

(a)

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- 5 (a) shall, on payment of the fee prescribed under that Act, record in the Register kept under that Act that the mortgage to which the certificate relates has been discharged; and
- 10 (b) shall, if the relevant grant, certificate of title or duplicate registered dealing upon which the mortgage is recorded, or the duplicate registered mortgage, is produced to him for the purpose, record thereon the discharge of the mortgage.
- 15 (c) by omitting from subsection two of section one hundred the words "entered in the register book" and by inserting in lieu thereof the words "recorded in the Register kept under that Act";
 - Sec. 100. (Foreclosure extinguishes right of action for mortgage debt, and equity of redemption.)
- 20 (d) (i) by omitting from subsection one of section one hundred and one the words "an instrument" and by inserting in lieu thereof the words "a mortgage registered";
 - Sec. 101. (Foreclosure, &c., in respect of lands mortgaged by dealings under the Real Property Act, 1900, and otherwise.)
- 25 (ii) by omitting from the same subsection the words "such instrument" and by inserting in lieu thereof the words "the mortgage";
- 25 (iii) by omitting from subsection two of the same section the words "the prescribed application" and by inserting in lieu thereof the words "lodgment of an application in the form approved under that Act";
- 30 (e) by omitting from section one hundred and five the words "and subject as in the two next succeeding sections provided" and by inserting in lieu thereof the words "provided in sections one hundred and six and one hundred and seven of this Act";
 - Sec. 105. (Application of Division 2 to mortgagors and mortgagees under Real Property Act mortgages.)
- (f)

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- (f) (i) by omitting subsection eight of section one hundred and six and by inserting in lieu thereof the following subsections : — Sec. 106.
(Leasing powers of mortgagor and of mortgagee in possession.)
- 5 (8) Where the land comprised in any such lease is under the provisions of the Real Property Act, 1900, the lease shall be registered in accordance with the provisions of that Act.
- 10 (8A) Where the land comprised in any such lease is not under the provisions of the Real Property Act, 1900, the lease shall be executed by the lessee and registered under the Registration of Deeds Act, 1897.
- 15 (ii) by omitting subsection ten of the same section and by inserting in lieu thereof the following subsection : —
- 20 (10) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding if—
- 25 (a) in so far as the lease, if granted, would comprise land under the provisions of the Real Property Act, 1900—a caveat has been lodged pursuant to section seventy-two of that Act in respect of the contract ; and
- 30 (b) in so far as the lease, if granted, would comprise land not under the provisions of the Real Property Act, 1900—the contract has been registered pursuant to the Registration of Deeds Act, 1897.
- (g)

Conveyancing (Amendment).

- 5 (g) (i) by omitting from subsection one of section one hundred and seven the words "the last preceding section" and by inserting in lieu thereof the words "section one hundred and six of this Act";
- (Powers (with a view to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of leases.)
- 10 (ii) by omitting from subsection seven of the same section the words "the last preceding section" and by inserting in lieu thereof the words "section one hundred and six of this Act";
- (Powers (with a view to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of leases.)
- 15 (h) by inserting in paragraph (b) of subsection one of section 109A after the words "Companies Act, 1936," the words "or under Division 7 of Part IV of the Companies Act, 1961,";
- (Sec. 109A. (Savings as to certain mortgages.)
- (i) by omitting from section one hundred and ten the words "the last preceding section" wherever occurring and by inserting in lieu thereof the words "section one hundred and nine of this Act";
- (Sec. 110. (Powers incident to power of sale.)
- 20 (j) by omitting from subsection three of section one hundred and fifteen the word ", distress,".
- (Sec. 115. (Appointment, powers, remuneration, and duties of receiver.)
- 20 9. The Principal Act is further amended—
- Further amendment of Act No. 6, 1919. Part VIII. (Leases.)
- (a) (i) by omitting from section one hundred and twenty-eight the words "Division 3" and by inserting in lieu thereof the words "Divisions 3 and 4";
- (Sec. 128. (Interpretation.)
- 25 (ii) by omitting from the same section the definition of "Bankruptcy";
- (b) (i) by omitting from paragraph (c) of subsection six of section one hundred and twenty-nine the words "on the bankruptcy of the lessee, or";
- (Sec. 129. (Restrictions on and relief against forfeiture of lease.)
- 30 (ii)

Conveyancing (Amendment).

- (ii) by omitting from paragraph (e) of the same subsection the words "on the bankruptcy of the lessee, or";
- 5 (iii) by omitting from the same paragraph the words "bankruptcy or";
- (iv) by omitting subsection seven of the same section;
- 10 (c) by omitting from section one hundred and thirty-three the words "the official assignee" and by inserting in lieu thereof the words "The Official Receiver in Bankruptcy or the trustee of the estate";
- 15 (d) by omitting subsection four of section 133B and by inserting in lieu thereof the following subsection :—
- (4) Paragraph (b) of subsection one, and subsections two and three, of this section do not apply to mining leases.
- (e) by inserting next after section 133B the following new Division :—
- Sec. 133.
(Involuntary assignment no breach of covenant against assignment, &c.)
- Sec. 133B.
(Provisions as to covenants not to assign, &c., without license or consent.)
- New
Division 4
of Part VIII.
- DIVISION 4.—*Options in leases.*
- 20 133C. In this Division—
- Interpretation.
- (a) a reference to an option contained in a lease is a reference to a right on the part of the lessee to require the lessor—
- 25 (i) to sell, or offer to sell, to the lessee the reversion expectant on the lease; or
- (ii) to grant, or offer to grant, to the lessee a renewal or extension of the lease, or a further lease, of the demised premises or a part thereof,
- 30 whether the right is conferred by the lease or by an agreement collateral to the lease; and
- (b)

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5 (b) a reference to a breach by a lessee of his obligations under a lease containing an option is a reference to a breach of those obligations by an act done or omitted to be done before or after the commencement of the Conveyancing (Amendment) Act, 1972, in so far as the act or omission would constitute a breach of those obligations if there were no option contained in the lease.

10 133D. (1) This Division applies to and in respect of leases granted before or after the commencement of the Conveyancing (Amendment) Act, 1972, and options contained therein. Application of Division.

15 (2) This Division has effect notwithstanding—

- (a) any stipulation to the contrary; and
- (b) the provisions of subsection three of section fifty-three of the Real Property Act, 1900.

20 133E. (1) In this Division "prescribed notice" means a notice in writing that— Breach of certain obligations not to preclude lessee from exercising option except in certain circumstances.

- (a) specifies an act or omission; and
- (b) states that, subject to any order of the court under section 133F of this Act, a lessor giving the notice proposes to treat that act or omission as having precluded a lessee on whom the notice is served from exercising an option contained in the lease.

25 (2) Where an act or omission that constituted a breach by a lessee of his obligations under a lease containing an option would, but for this section, have had the effect of precluding the

lessee

Conveyancing (Amendment).

5 lessee from exercising the option, the act or omission shall be deemed not to have had that effect where the lessee purports to exercise the option unless, during the period of fourteen days next succeeding the purported exercise of the option, the lessor serves on the lessee prescribed notice of the act or omission and—

10 (a) an order for relief against the effect of the breach in relation to the purported exercise of the option is not sought from the court before the expiration of the period of one month next succeeding service of the notice; or

15 (b) where such relief is so sought—

(i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief; or

20 (ii) where relief is granted upon terms to be complied with by the lessee before compliance by the lessor with the order granting relief, the lessee fails to comply with those terms within the time stipulated by the court for the purpose.

25 133F. (1) Relief referred to in section 133E of this Act may be sought—

Court may grant relief from breach of certain obligations.

(a) in proceedings instituted in the court for the purpose; or

30 (b) in proceedings in the court in which—

(i) the existence of an alleged breach by the lessee of his obligations under the lease; or

(ii)

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(ii) the effect of the breach from which relief is sought, is in issue.

5 (2) The court may, in proceedings in which relief referred to in section 133E of this Act is sought—

10 (a) make such orders (including orders affecting an assignee of the reversion) as it thinks fit for the purpose of granting the relief sought; or

(b) refuse to grant the relief sought.

(3) The court may, in proceedings referred to in subsection two of this section, take into consideration—

15 (a) the nature of the breach complained of;

(b) the extent to which, at the date of the institution of the proceedings, the lessor was prejudiced by the breach;

20 (c) the conduct of the lessor and the lessee, including conduct after the giving of the prescribed notice;

(d) the rights of persons other than the lessor and the lessee;

25 (e) the operation of section 133G of this Act; and

(f) any other circumstances considered by the court to be relevant.

(4) The court—

30 (a) may make an order under subsection two of this section on such terms as to costs, damages, compensation or penalty, or on such other terms, as the court thinks fit; and

(b)

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(b) may make any consequential or ancillary order it considers necessary to give effect to an order made under that subsection.

5 133G. (1) Subject to any order of the court and to this section— Lease to continue in force until issue decided.

(a) where—

- (i) an option is contained in a lease;
- (ii) the lessee exercises, or purports to exercise, the option; and
- 10 (iii) the lease would, but for this paragraph, expire within the period of fourteen days after the exercise, or purported exercise, of the option,

15 the lease shall be deemed to continue in force until the expiration of that period;

(b) where—

- (i) a prescribed notice is duly served on a lessee; and
- 20 (ii) the lease in respect of which the notice is served would, but for this paragraph, expire within the period of one month referred to in paragraph (a) of subsection two of section 133E of this Act,

25 the lease shall be deemed to continue in force until the expiration of that period; and

30 (c) where, in relation to a lease continued in force under paragraph (b) of this subsection, relief referred to in section 133E of this Act is sought by a lessee, the lease shall,

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subject to subsections two and three of this section, be deemed to continue in force until—

- 5 (i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting the relief; or
- 10 (ii) effect is given to orders made by the court in granting that relief in so far as they affect the lessor or relate to an assurance to the lessee.

(2) Paragraph (c) of subsection one of this section—

- 15 (a) does not apply to or in respect of a lease that, but for that paragraph, would continue in force for a period longer than the period for which it is, by the operation of that paragraph, continued in force; and
- 20 (b) does not, where a lessee fails to comply with terms imposed upon him pursuant to paragraph (a) of subsection four of section 133F of this Act, operate to continue the lease in force beyond the time of that failure by the lessee.

25 (3) Where, under subsection one of this section, a lease continues in force after the day on which, but for that subsection, it would expire—

- 30 (a) the lease so continues in force subject to the provisions, stipulations, covenants, conditions and agreements in the lease (other than those relating to the term and the option contained in the lease) but without prejudice to any rights or remedies of the lessor or lessee in relation to the lease; and

(b)

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5 (b) the lessee, if the lease is of land under the provisions of the Real Property Act, 1900, and the lessee is in possession of the demised premises, has the protection of paragraph (d) of section forty-two of that Act as if the lease were a tenancy referred to in that paragraph.

10 (4) Subject to subsection five of this section, where, pursuant to an option contained in a lease continued in force under subsection one of this section, the lease is renewed or a new lease is granted, the period during which the lease was so continued in force shall be deemed to be part of the term for which the lease was renewed or the new lease granted, and any lease granted pursuant to an exercise of the option shall be expressed to have commenced when the lease containing the option would, but for subsection one of this section, have expired.

15 (5) Subsection four of this section does not apply to or in respect of a lease that stipulates for the commencement of any lease granted pursuant to an exercise of the option contained therein on a day that is later than the day on which the lease so granted would, but for this subsection, commence under subsection four of this section.

20 **10.** The Principal Act is further amended by omitting from the definition of "Dividends" in section one hundred and forty-two the figures "1899" and by inserting in lieu thereof the figures "1961".

Further amendment of Act No. 6, 1919. Part XI. (Apportionment.) Sec. 142. (Interpretation of terms.)

11.

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11. The Principal Act is further amended by omitting paragraph (b) of subsection five of section 157A and by inserting in lieu thereof the following paragraph :—

5 (b) If the person who would have been entitled to the income is a person under mental disability the consent of the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, of the court, is sufficient authority to protect the trustees or
10 personal representatives so applying the compensation money.

Further amendment of Act No. 6, 1919. Part XV. (Executors and Administrators.) Sec. 157A. (Trustee or personal representative deemed entitled to sell and convey land resumed under statutory authority.)

12. The Principal Act is further amended—

15 (a) by omitting from subsection two of section one hundred and fifty-eight the word “instruments” and by inserting in lieu thereof the word “dealings”;

Further amendment of Act No. 6, 1919. Part XVI. (Powers of Attorney.) Sec. 158. (Application of Part XVI to land under Real Property Act, 1900.)

(b) by omitting subsections (4A) and (4B) of section one hundred and sixty;

Sec. 160. (Powers of attorney to continue in force until notice of death or revocation.)

20 (c) by omitting from subsection one of section one hundred and sixty-one the words “lunacy, unsoundness of mind,” wherever occurring and by inserting in lieu thereof the words “mental disability”;

Sec. 161. (Irrevocable power of attorney for value.)

25 (d) by omitting from subsection one of section one hundred and sixty-two the words “lunacy, unsoundness of mind,” wherever occurring and by inserting in lieu thereof the words “mental disability”.

Sec. 162. (Power of attorney made irrevocable for fixed time.)

13.

*Conveyancing (Amendment).***13.** The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XVII. (Purchasers : When Affected by Notice.)

- (a) by omitting subsection (1A) of section one hundred and sixty-four and by inserting in lieu thereof the following subsection :—

Sec. 164. (Restriction on constructive notice.)

5 (1A) Omission to search in any register or list kept by, or filed with, the Corporate Affairs Commission shall not of itself affect a purchaser of land with notice of any mortgage or charge.

- 10 (b) (i) by omitting from paragraph (a) of subsection one of section one hundred and sixty-seven the words “upon the certificate of title or Crown grant comprising the land” and by inserting in lieu thereof the words “forbidding the registration of dealings affecting that land except in accordance with the provisions of the Voluntary Workers (Soldiers’ Holdings) Act, 1917”;

Sec. 167. (Protection of purchasers of land subject to Voluntary Workers (Soldiers’ Holdings) Act, 1917.)

20 (ii) by omitting from paragraph (b) of the same subsection the words “other lands” and by inserting in lieu thereof the words “land not under the provisions of the Real Property Act, 1900.”

14. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XVIII. (Verification of Instruments: Statutory Declarations.)

(a)

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- (a) by omitting from subsection four of section one hundred and sixty-eight the word "instrument" and by inserting in lieu thereof the word "dealing"; Sec. 168. (Verification of instruments executed out of New South Wales.)
- 5 (b) by omitting from subsection five of section 168A the word "instrument" and by inserting in lieu thereof the word "dealing". Sec. 168A. (Verification of instruments executed out of New South Wales by persons engaged on war service.)
- 15 **15.** The Principal Act is further amended— Further amendment of Act No. 6, 1919. Part XIX. (Service of Notices.)
 - 10 (a) by omitting from subsection (2A) of section one hundred and seventy the word "instrument" where secondly occurring and by inserting in lieu thereof the word "dealing"; Sec. 170. (Regulations respecting notices.)
 - (b) by inserting in the same subsection after the word "instrument" where thirdly occurring the words "or dealing".
- 15 **16.** The Principal Act is further amended by omitting section one hundred and seventy-five and by inserting in lieu thereof the following section :— Further amendment of Act No. 6, 1919. Part XX. (Procedure: Orders: Execution.) Subst. sec. 175.

175. (1) The person to whom is directed a writ that authorises the taking in execution and sale of property of a judgment debtor may take in execution and sell property over which the judgment debtor
- 20

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debtor has a power of appointment that is exercisable by him for his own benefit without the assent of any other person.

5 (2) Where, under subsection one of this section, property the subject of a power of appointment is taken in execution and sold, the assurance to the purchaser operates as an exercise of the power.

10 (3) This section applies to land under the provisions of the Real Property Act, 1900.

17. The Principal Act is further amended by omitting from section one hundred and seventy-six the words "or certificated conveyancer" wherever occurring.

Further amendment of Act No. 6, 1919. Part XXI. (Adoption of Act.) Sec. 176. (Protection of solicitors, trustees, &c., acting under this Act.)

18. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XXII. (Miscellaneous.)

15 (a) by omitting from subsection two of section one hundred and eighty-one the word "instruments" and by inserting in lieu thereof the word "dealings";

Sec. 181. (Construction of expressions used in deeds and other instruments.)

20 (b) by omitting from subsection four of section 181A the word "instruments" and by inserting in lieu thereof the word "dealings";

Sec. 181A. (Construction of expressions "right of carriage way" and "right of footway".)

(b)

(c)

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- (c) by omitting from subsection three of section 181B the word "instruments" and by inserting in lieu thereof the word "dealings";
- (d) by omitting from subsection one of section one hundred and eighty-four the words "the Council of the Bar and the Incorporated Law Institute" and by inserting in lieu thereof the words "the New South Wales Bar Association and The Law Society of New South Wales".

Sec. 181B.
(Construction of expression "party wall" in assurances of land.)

Sec. 184.
(Committee for framing short forms.)

10 **19.** The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XXIII. (Registration.)

- (a) by inserting at the end of section one hundred and eighty-eight the following new subsection :—
- (3) This section does not apply, and shall be deemed never to have applied, in respect of land under the provisions of the Real Property Act, 1900.
- (b) by omitting from subsection one of section one hundred and ninety-one the words "entry in the register book under the said Act" and by inserting in lieu thereof the words "recording in the Register kept under that Act";
- (c) by omitting section one hundred and ninety-five ;

Sec. 188.
(Protection of purchasers against non-registered writs, orders, &c.)

Sec. 191.
(Application of Division to land under Real Property Act, 1900.)

Sec. 195.
(Registration of sequestration orders, &c., made in bankruptcy.)

(d)

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(d) by omitting section 195A;

Sec. 195A.
(Registration of notices under Commonwealth Bankruptcy Act.)

5 (e) (i) by inserting in subsection one of section one hundred and ninety-six after the word "expressions" the words "consolidated lot,";

Sec. 196.
(Registration of plans.)

(ii) by inserting in subsection two of the same section after the word "plan" where firstly occurring the words "of a consolidated lot or";

10 (iii) by inserting in the same subsection after the words "plan of the" the words "consolidated lot,";

15 (iv) by inserting in subsection three of the same section after the word "subdivision" wherever occurring the words "or other lawful division of land";

(v) by inserting next after subsection three of the same section the following new subsection :—

(3A) The Registrar-General—

20 (a) may accept lodgment in his office of a plan other than a plan referred to in subsection two or three of this section, whether or not it complies with subsection four of this section;

25 (b) may refuse to accept lodgment in his office of—

(i) a plan of land under the provisions of the Real Property Act, 1900, that, in his opinion,

illustrates

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5 illustrates without material change a lot or lots in a plan registered or recorded in his office that constitutes a current plan under section 327AA of the Local Government Act, 1919; or

10 (ii) a plan of land not under the provisions of the Real Property Act, 1900, unless it is a plan of subdivision or is lodged for the purposes of a primary application under that Act; and

15 (c) may refuse to record pursuant to subsection (9A) of this section a plan referred to in paragraph (a) or (b) of this subsection notwithstanding that he accepted it for lodgment in his office.

(vi) by omitting from subsection four of the same section the word "Every" and by inserting in lieu thereof the words "Subject to subsection (3A) of this section, a";

25 (vii) by omitting paragraph (c) of the same subsection and by inserting in lieu thereof the following paragraph :—

30 (c) be certified, in the form prescribed under the Surveyors Act, 1929, by a surveyor registered under that Act, unless the Registrar-General dispenses with the certificate.

(viii) by omitting the proviso to the same subsection ;

(ix)

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(ix) by omitting paragraph (a) of subsection five of the same section and by inserting in lieu thereof the following paragraph :—

5 (a) A plan lodged pursuant to this section
(other than a plan referred to in paragraph
(c) or (g) of the definition of “plan of sub-
division” in subsection one of section 327AA
of the Local Government Act, 1919) which,
10 on being registered or recorded in the office of
the Registrar-General will become a current
plan under that section, or a plan that bears a
statement—

15 (i) of intention to dedicate specified land
as a public road, as referred to in sub-
section one of section three hundred
and thirty-six of that Act;

(ii) of intention to create a public reserve,
as referred to in section 340D of that
Act;

20 (iii) of intention to create a drainage
reserve, as referred to in section 340E
of that Act; or

25 (iv) of intention to create an easement or
restriction as to user, as referred to in
subsection two of section 88B of this
Act,

30 shall be signed by every person having
sufficient estate or interest to transfer or con-
vey the land comprised in the proposed current
plan or, as the case may be, the land to which
the statement relates.

(x) by omitting from subparagraph (i) of para-
graph (b) of the same subsection the words
“the folium of the register-book constituted
35 by” and by inserting in lieu thereof the words

“the

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“the folio of the Register kept under the Real Property Act, 1900, in which is recorded particulars of”;

5 (xi) by inserting in the same subparagraph after the words “in the” the words “current plan,”;

(xii) by omitting subsection six of the same section;

(xiii) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection :—

10 (7) Every plan lodged under this section shall contain a statement showing whether—

(a) any, and, if any, which of the roads shown on the plan are intended to be dedicated to the public; and

15 (b) any public reserve or drainage reserve shown on the plan is intended to be created by registration of the plan.

(xiv) by omitting subsection eight of the same section;

20 (xv) by omitting subsection nine of the same section and by inserting in lieu thereof the following subsections :—

25 (9) (a) The Registrar-General shall not register a plan lodged under this section unless—

(i) the particulars of title of the land in the plan have been correctly represented to the Registrar-General;

30 (ii) the person who lodged the plan indicated on whose behalf it was lodged; and

(iii) the Registrar-General is satisfied that the plan is in registrable form.

(b)

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(b) A plan lodged under this section is not in registrable form unless—

- 5
- (i) it complies with the requirements of this or any other Act relating to such a plan; and
 - (ii) any boundary shown on the plan that existed before the plan was made is correctly defined therein.

10 (c) The Registrar-General may assume, and shall be deemed always to have been entitled to assume, that a person who lodges a plan under this section has authority from all persons having an interest in the land comprised in the plan—

- 15
- (i) to lodge it with the Registrar-General;
 - (ii) to uplift it for amendment or to withdraw it from registration and, in either case, to give a receipt therefor; and
 - (iii) to attend to all other matters which may arise in the course of registration of the plan within the office of the Registrar-General with respect thereto.
- 20

(d) The Registrar-General may reject a plan lodged under this section which is not in registrable form and may retain some or all of the fees paid upon lodgment of that plan.

25

(e) Subject to paragraph (f) of this subsection, where the Registrar-General is satisfied that a plan lodged in pursuance of subsection two or three of this section is in registrable form he shall register it by affixing his seal thereto and may issue such certificates of title in pursuance thereof as he considers appropriate.

30

(f) The Registrar-General may refuse to register a plan lodged under this section of

35

land

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land under the provisions of the Real Property Act, 1900, unless—

- 5 (i) any relevant grant or certificate of title has been lodged for the purpose of enabling the plan to be registered; or
- 10 (ii) where any relevant grant or certificate of title has not been so lodged but is otherwise in the custody of the Registrar-General, the Registrar-General has given to such persons as he thinks fit written notice of his intention to use the grant or certificate of title for the purpose of registering the plan and none of those persons, within a time limited in the notice for the purpose, notifies the Registrar-General in writing of his refusal to permit the grant or certificate of title so to be used.
- 20 (9A) Upon lodgment of a plan of a type which the Registrar-General is not by this Act required to register he may record the plan in such manner as to him appears appropriate.
- (xvi) by omitting subsection ten of the same section;
- 25 (xvii) by inserting in subsection twelve of the same section after the word "registered" the words "or recorded";
- (xviii) by omitting subsection fourteen of the same section;
- 30 (xix) by omitting from subsection fifteen of the same section the word "instrument" and by inserting in lieu thereof the word "dealing";
- 35 (f) (i) by inserting in subsection three of section 196A Sec. 196A. after the word "land" the words "not under (Register of resump- the provisions of the Real Property Act, tions.) 1900,";

(ii)

Conveyancing (Amendment).

(ii) by inserting next after the same subsection the following new subsection :—

5 (3A) Where a resumption is rescinded, the Crown or other authority that rescinds the resumption shall forthwith lodge with the Registrar-General notice of the rescission that, in so far as the resumption rescinded related to land under the provisions of the Real Property Act, 1900, is in the form approved by the Registrar-General under that Act.

10

(iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsections :—

15 (4) Upon receipt of a notice of resumption of land that is not under the provisions of the Real Property Act, 1900, or notice of rescission of such a resumption, the Registrar-General shall record particulars of the resumption or rescission in the Register of Resumptions.

20

(4A) Upon receipt of a notice of rescission of a resumption of land that is under the provisions of the Real Property Act, 1900, the Registrar-General—

25 (a) shall record the rescission in the Register kept under that Act; and

(b) in so far as the notice relates to land comprised in a certificate of title issued under subsection two of section 31A of that Act, or in a certificate of title replacing that certificate of title, being land that at the time of its resumption was not under the provisions of that

30

Act,

Conveyancing (Amendment).

Act, shall cancel that certificate of title wholly or partially, as the case may require, and shall record particulars of the rescission in the Register of Resumptions.

(4B) Land comprised in a certificate of title cancelled under paragraph (b) of subsection (4A) of this section ceases, upon the cancellation, to be land under the provisions of the Real Property Act, 1900.

(iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection :—

(5) With such modifications as may be necessary, this section applies to and in respect of the compulsory acquisition of land under an Act of the Parliament of the Commonwealth and so applies as if—

(a) such an acquisition were a resumption; and

(b) the words “shall forthwith” were omitted from subsections three and (3A) and the word “may” were inserted in lieu thereof.

(g) by omitting from section one hundred and ninety-seven the words “or certificated conveyancer” wherever occurring; Sec. 197. (Official searches.)

(h) by omitting subsection (1A) of section two hundred and two. Sec. 202. (General rules under this Part of this Act as to registration and fees.)

Conveyancing (Amendment).

20. The Principal Act is further amended—

Further amendment of Act No. 6, 1919.

(a) by omitting the matter distinguished by the figure "4." in Column one and Column two of Part II of Schedule IV and by inserting in lieu thereof the following matter :—

4. And to maintain and leave the premises in good repair (having regard to their condition at the commencement of the lease), reasonable wear and tear, war damage, and damage by fire, lightning, flood and tempest excepted.

4. And also that the lessee will during the term, when, where, and so often as the need shall be, but having regard to the condition of the demised premises at the commencement of the lease and excepting reasonable wear and tear, war damage, and damage by fire, lightning, flood and tempest, occurring within the term—

(a) well and sufficiently maintain, amend, and keep; and

(b) at the expiration or sooner determination of the term peaceably surrender and yield up unto the lessor,

in good and substantial repair the demised premises, including all appurtenances, buildings, erections and fixtures belonging to the demised premises, or at any time within the term lawfully made or erected by the lessor upon or within the demised premises.

(b) by omitting from Column one and Column two of the same Part of the same Schedule the matter distinguished by the figure "5."

21. (1) The Principal Act is further amended by omitting subparagraph (ii) of paragraph (e) of subsection five of section one hundred and ninety-six and by inserting in lieu thereof the following words :—

Further amendment of Act No. 6, 1919.

Statute law revision.

(ii) when the person liable for damages is dead, bankrupt, or insolvent, or cannot be found within the jurisdiction,

Conveyancing (Amendment).

such damages with costs of action may be recovered out of the Closer Settlement Fund or the Consolidated Revenue Fund by action against such person as the Governor may appoint as nominal defendant.

- 5 (2) The amendment made by subsection one of this section shall be deemed to have commenced on the fifteenth day of June, one thousand nine hundred and sixty-four.

22. The Trustee Act, 1925, is amended by inserting next after subsection three of section seventy-five the following new subsection :—

Amendment
of Act No.
14, 1925.
Sec. 75.
(Deceased
mortgagee.)

15 (3A) With such modifications as may be necessary, subsections (1A), (1B) and (1C) of section ninety-eight of the Conveyancing Act, 1919, apply to and in respect of an order under this section and the mortgage to which it relates and so apply—

- (a) as if a reference in those subsections to a determination by the court were a reference to an order under this section; and
- 20 (b) as if the words “, except to the extent that it is extinguished or reduced by the operation of this section,” were omitted from subsection (1C) of that section.

23. The Real Property Act, 1900, is amended—

Amendment
of Act No.
25, 1900.

25 (a) by inserting in the definition of “Approved form” in paragraph (a) of section three after the word “this” the words “or any other”;

Sec. 3.
(Interpre-
tation.)

(b) by inserting at the end of section one hundred and forty-four the following new subsection :—

Sec. 144.
(Regula-
tions.)

30 (2) In subsection one of this section, a reference to “the administration of this Act” includes a reference to the administration of any other Act in

Conveyancing (Amendment).

5 so far as that other Act affects the functions of the Registrar-General with respect to land under the provisions of this Act, whether or not that other Act makes provision for matters to be prescribed thereunder with respect to that land.

24. (1) The provisions of section ninety-eight of the Principal Act, as amended by this Act, and of section seventy-five of the Trustee Act, 1925, as so amended, apply to and in respect of applications made under those sections, as enacted 10 before the commencement of this Act, where the applications are heard and determined after that commencement.

Application
of certain
amend-
ments.

(2) In paragraph (b) of subsection one of section 133F of the Principal Act, as amended by this Act, a reference to proceedings includes a reference to proceedings instituted 15 before, and heard and determined after, the commencement of this Act.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, NEW SOUTH WALES—1972

[45c]

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
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CHICAGO, ILLINOIS 60637
TEL: 773-936-3700
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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

I. P. K. VIDLER,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 14 March, 1972.*

New South Wales



ANNO VICESIMO PRIMO

ELIZABETHÆ II REGINÆ

Act No. 17, 1972.

An Act to amend the law of property and to simplify and improve the practice of conveyancing; to make provision with respect to the interpretation of the word "brick" in restrictive building covenants; to make certain provisions with respect to options in leases; to make further provision with respect to the registration of plans; for these and other purposes to amend the Conveyancing Act, 1919, the Trustee Act, 1925, and the Real Property Act, 1900; and for purposes connected therewith. [Assented to, 29th March, 1972.]

BE

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

L. A. PUNCH,
Chairman of Committees of the Legislative Assembly.

Conveyancing (Amendment).

BE it enacted by the Queen'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 :—

Short title. 1. (1) This Act may be cited as the "Conveyancing (Amendment) Act, 1972".

(2) The Conveyancing Act, 1919, is in this Act referred to as the Principal Act.

Amendment of Act No. 6, 1919.
Sec. 2.
 (Division of Act.)

2. The Principal Act is amended—

(a) (i) by inserting in section two at the end of the matter relating to Part VIII the following new matter :—

DIVISION 4.—*Options in leases*—ss. 133C–133G.

(ii) by omitting from the matter relating to Part XXIII the matter relating to Division 2.

Sec. 6.
 (Application to Real Property Act, 1900, and Crown Lands Acts.)

(b) by omitting from subsection three of section six the word "instruments" and by inserting in lieu thereof the word "dealings".

Further amendment of Act No. 6, 1919.

Part I.
 (Interpretation.)

Sec. 7.
 (Interpretation.)

3. The Principal Act is further amended—

(a) by omitting from the definition of "Bankruptcy" in subsection one of section seven the words "under any Act heretofore or for the time being in force" and by inserting in lieu thereof the words "before or after the commencement of the Conveyancing (Amendment) Act, 1972";

(b)

Conveyancing (Amendment).

- (b) by omitting from the same definition the figures "1899" and by inserting in lieu thereof the figures "1961";
- (c) by inserting in the same subsection next after the definition of "Court" the following new definition :—

"Dealing" has the same meaning as it has in the Real Property Act, 1900.
- (d) by omitting from the definition of "Deed" in the same subsection the words "an instrument" and by inserting in lieu thereof the words "a dealing";
- (e) by omitting from the same subsection the definition of "Insane person," "Insane patient," and "Incapable person";
- (f) by inserting in the same subsection next after the definition of "Land under the provisions of the Real Property Act, 1900," the following new definition :—

"Mental disability" means the legal disability by reason of which the property of a person subject thereto may, pursuant to the law from time to time in force with respect to mental health, be committed to the management and care of another person.
- (g) by omitting from the same subsection the definition of "Trust corporation" and by inserting in lieu thereof the following definition :—

"Trust corporation" means the Public Trustee or a trustee company or The Official Receiver in Bankruptcy or the trustee in whom is vested the property of a bankrupt.

Conveyancing (Amendment).

Further amendment of Act No. 6, 1919.

Part II.
(General Rules affecting Property.)

Sec. 19A.
(Estates tail—further provisions.)

4. The Principal Act is further amended—

- (a) (i) by omitting from subsection one of section 19A the words “commencement of the Limitation Act, 1969” and by inserting in lieu thereof the words “first day of January, one thousand nine hundred and seventy-one”;
- (ii) by omitting from subsection three of the same section the words “the prescribed application to make all such entries in the register book” and by inserting in lieu thereof the words “application in the form approved under that Act to make all such recordings in the Register kept under that Act”;

Sec. 23.
(Dealings with land of undischarged bankrupt.)

- (b) by inserting at the end of section twenty-three the following new subsection :—

(4) An order affecting the title to any land (not being land under the provisions of the Real Property Act, 1900) made under the Bankruptcy Act, 1898, is void as against a person who, after the commencement of the Conveyancing (Amendment) Act, 1972, and without notice of the order, purchases land from a person whose title to the land is affected by the order, unless the order is registered in the register of causes, writs, and orders affecting land.

Sec. 23B.
(Assurances of land to be by deed.)

- (c) by omitting paragraph (b) of subsection two of section 23B and by inserting in lieu thereof the following paragraph :—

(b) a disclaimer made in accordance with any law relating to bankruptcy in force before or after the commencement of the Conveyancing (Amendment) Act, 1972, or not required to be evidenced in writing;

(d)

Conveyancing (Amendment).

- (d) by omitting subsection five of section twenty-eight and by inserting in lieu thereof the following subsection :—
- Sec. 28.
(Release and disclaimer of powers.)

(5) Where any such power is exercisable by a dealing to be registered under the Real Property Act, 1900, the power may be released or disclaimed by a dealing in the form approved under that Act and such a dealing may be registered under that Act.

- (e) by omitting from paragraph (b) of subsection one of section thirty-one the word "hereof" and by inserting in lieu thereof the words "of paragraph (a) of this subsection".
- Sec. 31.
(Restriction on directions for accumulation of income.)

5. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part III. (General Rules Relating to Deeds.)

- (a) by omitting from subsection one of section forty-one the words "an instrument" where secondly occurring and by inserting in lieu thereof the words "a dealing";
- Sec. 41.
(Mode of exercise of powers.)

- (b) by omitting from the same subsection the word "instrument" where thirdly occurring and by inserting in lieu thereof the word "dealing".

6. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part IV. (Sales and other Transactions.)

(a)

Conveyancing (Amendment).

Sec. 53.
(Rules for
regulating
obligations
and rights
of vendors
and pur-
chasers.)

(a) by inserting in paragraph (e) of subsection two of section fifty-three after the word "Registrar-General" the words "pursuant to section sixty-four of this Act";

Sec. 57.
(Conditions
of sale of
land under
the pro-
visions of
the Real
Property
Act, 1900.)

(b) (i) by omitting from subsection one of section fifty-seven the word "instrument" where firstly, thirdly and fourthly occurring and by inserting in lieu thereof the word "dealing";
(ii) by omitting from paragraph (b) of the same subsection the word "register" and by inserting in lieu thereof the words "Register kept under that Act";

Sec. 62.
(Mode of
negating
identity of
bankrupts.)

(c) by omitting section sixty-two;

Sec. 64.
(Satisfaction
of covenants
to produce
deeds.)

(d) by inserting at the end of section sixty-four the following new subsection :—

(2) Where the Registrar-General has—

(a) pursuant to subsection five of section seventeen of the Real Property Act, 1900, or pursuant to subsection two of section 31A of that Act, issued a certificate or certificates of title; or

(b) pursuant to subsection four of section 28M of that Act, cancelled the caution or cautions recorded on any qualified certificate or certificates of title,

for the whole of the land affected by a document deposited pursuant to subsection one of this section the Registrar-General may, notwithstanding subsection one of this section but subject to section fourteen of the Archives Act, 1960 destroy that document.

(e)

Conveyancing (Amendment).

- (e) by omitting from subsection five of section sixty-six the words "entries in the register-book" and by inserting in lieu thereof the words "recordings in the Register kept under that Act"; Sec. 66. (Provision by court for incumbrances and sale freed therefrom.)
- (f) (i) by omitting from subsection two of section 66D the word "has" and by inserting in lieu thereof the word "had"; Sec. 66D. (Powers of management, &c., conferred on trustees for sale.)
- (ii) by omitting paragraph (a) of subsection four of the same section and by inserting in lieu thereof the following paragraph :—
- (a) If a share in the net proceeds belongs to a person under mental disability, the consent of the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, of the court, shall be sufficient to protect the trustees for sale.
- (g) by omitting paragraph (b) of subsection five of section 66G and by inserting in lieu thereof the following paragraph :— Sec. 66G. (Statutory trusts for sale or partition of property held in co-ownership.)
- (b) Where any of the co-owners is a person under mental disability, the notice shall be served on the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, on such officer of the court as may be prescribed by rules of court.

7. (1) The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part VI. (Covenants and Powers.)

(a)

Conveyancing (Amendment).

Sec. 78.
(Covenants
for title
to be
implied.)

- (a) (i) by omitting from subsection one of section seventy-eight the word "conveys" where firstly occurring and by inserting in lieu thereof the words "is therein expressed to convey";
- (ii) by inserting in the same subsection after the words "conveyance is" where firstly, secondly and thirdly occurring the words "expressed to be";
- (iii) by omitting from paragraph (A) of the same subsection the words "In a conveyance for valuable consideration other than a mortgage the following covenant, by a person who conveys and is expressed to convey as beneficial owner" and by inserting in lieu thereof the words "In a conveyance (other than a mortgage) for valuable consideration executed after the first day of July, one thousand nine hundred and twenty, and before the commencement of the Conveyancing (Amendment) Act, 1972, the following covenant by a person therein expressed to convey as beneficial owner and in a conveyance (other than a mortgage and whether or not for valuable consideration) executed after that commencement the following covenant by a person therein expressed to convey as beneficial owner";
- (iv) by omitting from the same paragraph the words "who so conveys" wherever occurring and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
- (v) by omitting from the same paragraph the word "conveying" wherever occurring and by inserting in lieu thereof the words "therein expressed to be conveying";

(vi)

Conveyancing (Amendment).

- (vi) by omitting from the same paragraph the words "person to whom the conveyance is made" and by inserting in lieu thereof the words "person to whom the conveyance is expressed to be made";
- (vii) by omitting from paragraph (B) of the same subsection the words "In a conveyance of leasehold property for valuable consideration other than a mortgage the following further covenant, by a person who conveys and is expressed to convey as beneficial owner" and by inserting in lieu thereof the words "In a conveyance (other than a mortgage) of leasehold property for valuable consideration executed after the first day of July, one thousand nine hundred and twenty, and before the commencement of the Conveyancing (Amendment) Act, 1972, the following further covenant by a person therein expressed to convey as beneficial owner and in such a conveyance (other than a mortgage and whether or not for valuable consideration) executed after that commencement the following further covenant by a person therein expressed to convey as beneficial owner";
- (viii) by omitting from the same paragraph the words "who so conveys" and by inserting in lieu thereof the words "therein expressed to convey as beneficial owner";
- (ix) by omitting from the same paragraph the word "conveyed" wherever occurring and by inserting in lieu thereof the words "expressed to be conveyed";
- (x) by omitting from paragraph (C) of the same subsection the words "In a deed by way of mortgage the following covenant, by a person who conveys and is expressed to convey as
beneficial

Conveyancing (Amendment).

beneficial owner” and by inserting in lieu thereof the words “In a conveyance by way of mortgage executed after the first day of July, one thousand nine hundred and twenty, the following covenant by a person therein expressed to convey as beneficial owner”;

- (xi) by omitting from the same paragraph the words “who so conveys” wherever occurring and by inserting in lieu thereof the words “therein expressed to convey as beneficial owner”;
- (xii) by omitting from the same paragraph the word “conveying” where firstly, secondly and thirdly occurring and by inserting in lieu thereof the words “who executes the conveyance and is therein expressed to be conveying”;
- (xiii) by omitting from the same paragraph the words “subject-matter of conveyance” wherever occurring and by inserting in lieu thereof the words “subject-matter expressed to be conveyed”;
- (xiv) by omitting from the same paragraph the words “so conveying” and by inserting in lieu thereof the words “therein expressed to convey as beneficial owner”;
- (xv) by omitting from the same paragraph the words “conveyance is made” and by inserting in lieu thereof the words “conveyance is expressed to be made”;
- (xvi) by omitting from paragraph (D) of the same subsection the words “In a conveyance by way of mortgage of leasehold property the following further covenant, by a person who conveys

and

Conveyancing (Amendment).

and who is expressed to convey as beneficial owner” and by inserting in lieu thereof the words “In a conveyance by way of mortgage of leasehold property executed after the first day of July, one thousand nine hundred and twenty, the following further covenant by a person therein expressed to convey as beneficial owner”;

- (xvii) by inserting in the same paragraph after the word “land” where secondly occurring the words “expressed to be”;
- (xviii) by omitting from the same paragraph the words “so conveying” and by inserting in lieu thereof the words “therein expressed to convey as beneficial owner”;
- (xix) by omitting from the same paragraph the words “conveyance is made” and by inserting in lieu thereof the words “conveyance is expressed to be made”;
- (xx) by omitting from paragraph (E) of the same subsection the words “In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor” and by inserting in lieu thereof the words “In a conveyance by way of settlement executed after the first day of July, one thousand nine hundred and twenty, the following covenant by a person therein expressed to convey as settlor”;
- (xxi) by omitting from the same paragraph the words “so conveying” and by inserting in lieu thereof the words “therein expressed to convey as settlor”;

(xxii)

Conveyancing (Amendment).

- (xxii) by omitting from the same paragraph the words "of the conveyance" and by inserting in lieu thereof the words "expressed to be conveyed";
- (xxiii) by omitting from the same paragraph the words "conveyance is made" and by inserting in lieu thereof the words "conveyance is expressed to be made";
- (xxiv) by omitting from paragraph (F) of the same subsection the words "In any conveyance the following covenant by every person who conveys, and is expressed to convey," and by inserting in lieu thereof the words "In a conveyance executed after the first day of July, one thousand nine hundred and twenty, the following covenant by every person therein expressed to convey";
- (xxv) by omitting from the same paragraph the words "or mortgagee, or as the executor or administrator of a deceased person, or as Master in Lunacy, or as committee or manager of the estate of any insane or incapable person within the meaning of the Lunacy Act of 1898" and by inserting in lieu thereof the words "mortgagee, executor or administrator, or in a specified capacity for the time being apt to describe a person having the management and care of the property of a person under mental disability";
- (xxvi) by omitting from the same paragraph the words "so conveying" and by inserting in lieu thereof the words "therein so expressed to convey";
- (xxvii) by omitting from the same paragraph the words "of the conveyance" and by inserting in lieu thereof the words "expressed to be conveyed";
- (xxviii)

Conveyancing (Amendment).

(xxviii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) Where, in a conveyance executed after the first day of July, one thousand nine hundred and twenty—

(a) a person is therein expressed to be conveying at the direction of another person; and

(b) that other person is therein expressed to have given that direction as beneficial owner,

the same covenant by that other person shall be implied in the conveyance as would be implied therein by the operation of subsection one of this section if that other person had been expressed therein to convey as beneficial owner.

(xxix) by omitting subsection three of the same section and by inserting in lieu thereof the following subsection :—

(3) Where a conveyance executed after the first day of July, one thousand nine hundred and twenty, is a conveyance by a wife of property not held by her as her separate property and she and her husband are in the conveyance each expressed to convey as beneficial owner, the same covenant by the husband shall be implied in the conveyance as would be implied if he were therein expressed to have, as beneficial owner, directed his wife to convey.

(xxx)

Conveyancing (Amendment).

(xxx) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

(4) A covenant by a person is not implied by the operation of this section in a conveyance executed after the first day of July, one thousand nine hundred and twenty, where—

(a) that person is not therein expressed to be conveying as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as executor or administrator, or in a specified capacity for the time being apt to describe a person having the management and care of the property of a person under mental disability, or under an order of the court; or

(b) the conveyance is expressed to be at the direction of that person, but he—

(i) did not execute the conveyance; or

(ii) is not therein expressed to have given the direction as beneficial owner.

(xxxi) by omitting subsection six of the same section ;

(b) by omitting from subsection two of section eighty-three the word “instruments” and by inserting in lieu thereof the word “dealings”;

(c) by omitting subsection three of section eighty-eight and by inserting in lieu thereof the following subsection :—

(3) This section applies to land under the provisions of the Real Property Act, 1900, and in respect thereof—

(a) the Registrar-General shall have, and shall be deemed always to have had, power to record

Sec. 83.
(Implied covenants,— with mortgagees.)

Sec. 88.
(Limitation of enforceability of easements and restrictions of user of land.)

Conveyancing (Amendment).

record a restriction referred to in subsection one of this section upon the folio of the Register kept under that Act that relates to the land subject to the burden of the restriction, to record in like manner any dealing purporting to affect the operation of a restriction so recorded and to record in like manner any release, variation or modification of the restriction;

- (b) a recording in the Register kept under that Act of any such restriction shall not give the restriction any greater operation than it has under the dealing creating it; and
- (c) a restriction so recorded is an interest within the meaning of section forty-two of that Act.
- (d) by omitting from subsection three of section 88B the word "notify" and by inserting in lieu thereof the word "record";
- (e) by inserting next after section 88B the following new sections:—

Sec. 88B.
(Creation of easements and restrictions as to user by plans of subdivision.)

New secs. 88C and 88D.

88C. (1) In this section "restriction" means a restriction as to the user of land that arose, under covenant or otherwise, before the commencement of the Conveyancing (Amendment) Act, 1972, or so arises after that commencement, the benefit of which is intended to be annexed to other land.

Restrictions relating to brick construction.

(2) For the purposes of this section—

- (a) a wall of a building or structure is of brick veneer construction in so far as the outer part of that wall consists of brick having a thickness of at least three inches and the inner part of that wall consists of a material other than brick; and

(b)

Conveyancing (Amendment).

- (b) a building or structure is of brick veneer construction if its external walls are of brick veneer construction, or partly of brick construction and partly of brick veneer construction, whether or not its other walls are so constructed.

(3) To the extent to which a restriction—

- (a) does not operate to prohibit the erection on land to which the restriction relates of a building or structure having walls of brick; and
- (b) does not exclude the operation of this section by specific reference thereto or does not, by the express use in the instrument under which it arises of terms appropriate to describe brick veneer construction, operate to prohibit the use of that form of construction in a building or structure to be erected on that land,

it is not a breach of the restriction to erect on that land a building or structure of brick veneer construction.

(4) This section applies to and in respect of a building or structure erected before or after the commencement of the Conveyancing (Amendment) Act, 1972, and so applies as if a building or structure erected before that commencement had been erected after that commencement.

Restriction
on user of
certain land.

88D. (1) In this section—

“prescribed authority” means—

- (a) the Crown; or
- (b) a public or local authority constituted by an Act;

“prescribed land” means land vested in a prescribed authority.

(2)

Conveyancing (Amendment).

(2) Where he considers it to be in the public interest so to do, the Governor may restrict the user of prescribed land by an order published in the Gazette that—

- (a) describes the land in a manner enabling it to be identified and specifies, in the case of land under the provisions of the Real Property Act, 1900, the reference to the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;
- (b) specifies the terms of the restriction; and
- (c) specifies the prescribed authority in which the land is vested.

(3) Subject to subsection seven of this section, upon lodgment in a form approved by the Registrar-General of a copy of an order published under subsection two of this section, the Registrar-General shall—

- (a) where the land to which the order relates is land under the provisions of the Real Property Act, 1900—record the restriction on the folio of the Register kept under that Act, or the registered dealing under that Act, that evidences the title to that land;
- (b) in any other case—cause the copy of the order to be registered in the General Registry of Deeds kept under the Registration of Deeds Act, 1897.

(4) For the purposes of the Registration of Deeds Act, 1897, a copy of an order registered pursuant to paragraph (b) of subsection three of this section shall be deemed to be a registration copy of an instrument duly registered under that Act.

(5)

Conveyancing (Amendment).

(5) A restriction referred to in an order published under subsection two of this section—

(a) has no force or effect—

- (i) unless it is recorded, or the copy of the order is registered, pursuant to subsection three of this section; and
- (ii) unless, at the time when that recording or registration is effected, the land to which the restriction relates is vested in the prescribed authority specified in the order,

and subject thereto takes effect upon being so recorded or registered; and

(b) when recorded as provided by paragraph (a) of subsection three of this section, has no greater operation than it has under the order that relates to it and under this section.

(6) Where a restriction is recorded pursuant to paragraph (a) of subsection three of this section, the title of the registered proprietor of land to which the restriction relates is, for the purposes of section forty-two of the Real Property Act, 1900, subject to the restriction.

(7) Where the Registrar-General is satisfied that, by the operation of subparagraph (ii) of paragraph (a) of subsection five of this section, a restriction referred to in an order published under subsection two of this section would have no force or effect if recorded under subsection three of this section or if a copy of the order in which the restriction is referred to is registered under that subsection, he shall, where the land described in

the

Conveyancing (Amendment).

the order is land under the provisions of the Real Property Act, 1900, and may, in any other case, refuse to record the restriction or, as the case may require, to register a copy of the order in which the restriction is referred to.

(8) Subject to subsection nine of this section, where a restriction takes effect under this section the prescribed authority specified in the order by which the restriction was imposed may enforce the restriction against a person claiming an interest in the land described in the order as if, upon the acquisition by that person of that interest, he had entered into a binding covenant with that prescribed authority to observe the restriction.

(9) Subsection eight of this section does not authorise enforcement against a person claiming an interest in land of a restriction on the user of the land imposed by this section where that person—

- (a) is a person who, at the time the restriction took effect, had acquired that interest or had acquired or become entitled to an option to purchase that interest; or
- (b) is a person claiming that interest through or under a person referred to in paragraph (a) of this subsection.

(10) The powers of the Governor to alter or vary an order made by him do not extend to an order published under subsection two of this section.

(11) The powers of the Governor to rescind or revoke an order published under subsection two of this section may be exercised in relation to the whole of the land described in the order or any part thereof.

(12)

Conveyancing (Amendment).

(12) Where an order rescinding or revoking an order published under subsection two of this section is published in the Gazette, the prescribed authority specified in the order rescinded or revoked shall lodge with the Registrar-General in a form approved by him a copy of the order of rescission or revocation and subsections three and four of this section shall apply to and in respect of such a copy so lodged as if it were a copy of an order published under subsection two of this section.

Sec. 89.
(Power for court to modify or extinguish easements and restrictive covenants.)

- (f) (i) by inserting in subsection seven of section eighty-nine after the word "section" the words "affecting land not under the provisions of the Real Property Act, 1900,";
- (ii) by omitting subsection eight of the same section and by inserting in lieu thereof the following subsection :—

(8) This section applies to land under the provisions of the Real Property Act, 1900, and the Registrar-General shall, on application made in the form approved under that Act, make all necessary recordings in the Register kept under that Act for giving effect to the order.

For the purposes of this subsection, a grant, certificate of title or duplicate registered dealing that is not in the possession of the Registrar-General shall be deemed to be wrongfully retained within the meaning of section one hundred and thirty-six of the Real Property Act, 1900.

- (iii) by omitting from subsection nine of the same section the words "other land" and by inserting in lieu thereof the words "land which is not under the provisions of the Real Property Act, 1900,".

(2)

Conveyancing (Amendment).

(2) The amendments made by paragraph (a) of subsection one of this section do not apply to or in respect of conveyance dated the twenty-ninth day of September, one thousand nine hundred and sixty, from Bankstown Finance and Investment Co. Pty. Limited to Coronet Homes Pty. Limited, registered under the Registration of Deeds Act, 1897, as book 2548 number 523.

8. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part VII. (Mortgages.)

- (a) by omitting subsection six of section ninety-one and by inserting in lieu thereof the following subsection :—

Sec. 91. (Indorsements on mortgages.)

(6) Subject to the memorandum referred to in subsection one of this section being in or to the effect of an approved form within the meaning of the Real Property Act, 1900, paragraphs (b), (c) and (d) of that subsection apply to mortgages under that Act and, upon lodgment of such a memorandum for registration, the Registrar-General shall make such recordings in the Register kept under that Act as may be necessary to give effect to the memorandum.

- (b) (i) by omitting subsection one of section ninety-eight and by inserting in lieu thereof the following subsections :—

Sec. 98. (Facilitation of redemption in case of absent or unknown mortgagees.)

(1) Where land is subject to a mortgage and the person empowered to reconvey the land or, where the land is under the provisions of the Real Property Act, 1900, to execute in respect thereof a discharge referred to in section sixty-five of that Act, is out of the jurisdiction, cannot be found or is unknown, or if it is uncertain who that person is, the court may, upon the application of the person for

Conveyancing (Amendment).

for the time being entitled to redeem the mortgaged land, determine in such manner as the court thinks fit whether or not all amounts due under the mortgage have been paid and, if not, the amount thereof outstanding.

(1A) Where the court has made a determination under subsection one of this section in relation to a mortgage, the mortgagee is, to the extent provided by this section, liable to pay the costs of the applicant incurred in obtaining the determination, any rule of law or stipulation to the contrary notwithstanding.

(1B) The amount of costs that a mortgagee is liable under subsection (1A) of this section to pay in respect of a determination under subsection one of this section is the amount by which—

- (a) the amount certified by the court when making the determination as reasonable costs of the applicant incurred in obtaining the determination,

exceeds—

- (b) the amount of remuneration that would have been payable by the mortgagee pursuant to the general order for the time being in force under section two hundred and six of this Act if—
- (i) a discharge of the mortgage had been executed at the time the determination was made; and
 - (ii) that general order had been applicable in respect of that discharge of mortgage.

(1C)

Conveyancing (Amendment).

(1C) The amount of costs that a mortgagee is liable, under subsection (1A) of this section, to pay to an applicant shall, except to the extent that it is extinguished or reduced by the operation of this section, be deemed to be a specialty debt recoverable by the applicant and incurred at the time of the making of the determination to which the costs relate.

(1D) Where the court determines under subsection one of this section that the amount due under a mortgage has not been repaid and the amount thereof determined by the court to be outstanding exceeds the amount of costs calculated under subsection (1B) of this section in respect of the determination, the applicant for the determination may pay into court the difference between the amount so determined and the amount so calculated and, upon the amount of that difference being so paid—

- (a) the amount due under the mortgage at the time of the payment into court shall be deemed to have been reduced by the amount so calculated and by the amount paid into court; and
- (b) the debt owing under subsection (1C) of this section by the mortgagee to the applicant shall be deemed to have been extinguished.

(1E) Where the court determines under subsection one of this section that the amount due under a mortgage has not been repaid and the amount thereof determined by the court to be outstanding is equal to or less than the amount of costs calculated under subsection (1B) of this section in respect of the determination—

- (a)

Conveyancing (Amendment).

- (a) the amount due under the mortgage at the time of the determination shall be deemed to have been reduced by the amount so determined;
- (b) the debt owing under subsection (1C) of this section by the mortgagee to the applicant for the determination shall be deemed to have been reduced by the amount so determined; and
- (c) for the purposes of subsection (1F) of this section, the court shall be deemed to have determined that the amount due under the mortgage has been repaid.

(1F) Where—

- (a) the court determines under this section that the amount due under a mortgage has been repaid, whether by the operation of paragraph (c) of subsection (1E) of this section or otherwise; or
- (b) payment into court is made under subsection (1D) of this section,

an officer of the court prescribed by rules of court may give a certificate to the effect that this section has been complied with in relation to the mortgage in respect of which the determination was made or the money paid into court.

- (ii) by omitting subsection two of the same section and by inserting in lieu thereof the following subsection :—

(2) In favour of a purchaser of land comprised in a mortgage referred to in a certificate given under subsection (1F) of this section, the certificate operates as a discharge of the land from the amount due under the mortgage,
and

Conveyancing (Amendment).

and as a deed of conveyance, in the same manner as a memorandum of discharge operates under subsection three of section ninety-one of this Act.

- (iii) by omitting from subsection three of the same section the words "the amount so paid into court" and by inserting in lieu thereof the words "an amount paid into court under subsection (1D) of this section";
- (iv) by inserting next after the same subsection the following new subsection :—

(3A) A determination by the court under this section with respect to a mortgage is not, as between persons referred to in subsection one of this section, conclusive as to—

- (a) whether or not an amount is due under the mortgage at the time of the determination; or
- (b) whether the amount determined by the court to be due under the mortgage is the amount so due at the time of the determination,

and, except to the extent of the operation of paragraph (a) of subsections (1D) and (1E), and of subsection two, of this section, that determination does not prejudice any right conferred by the mortgage for the recovery of an amount due thereunder.

- (v) by omitting subsection four of the same section and by inserting in lieu thereof the following subsection :—

(4) This section, subsection two excepted, applies to and in respect of mortgages under the Real Property Act, 1900, and, upon production to the Registrar-General of a certificate under subsection (1F) of this section that relates to such a mortgage, the Registrar-General—

(a)

Conveyancing (Amendment).

- (a) shall, on payment of the fee prescribed under that Act, record in the Register kept under that Act that the mortgage to which the certificate relates has been discharged; and
- (b) shall, if the relevant grant, certificate of title or duplicate registered dealing upon which the mortgage is recorded, or the duplicate registered mortgage, is produced to him for the purpose, record thereon the discharge of the mortgage.
- Sec. 100.
(Foreclosure extinguishes right of action for mortgage debt, and equity of redemption.)
- (c) by omitting from subsection two of section one hundred the words "entered in the register book" and by inserting in lieu thereof the words "recorded in the Register kept under that Act";
- Sec. 101.
(Foreclosure, &c., in respect of lands mortgaged by dealings under the Real Property Act, 1900, and otherwise.)
- (d) (i) by omitting from subsection one of section one hundred and one the words "an instrument" and by inserting in lieu thereof the words "a mortgage registered";
- (ii) by omitting from the same subsection the words "such instrument" and by inserting in lieu thereof the words "the mortgage";
- (iii) by omitting from subsection two of the same section the words "the prescribed application" and by inserting in lieu thereof the words "lodgment of an application in the form approved under that Act";
- Sec. 105.
(Application of Division 2 to mortgagors and mortgagees under Real Property Act mortgages.)
- (e) by omitting from section one hundred and five the words "and subject as in the two next succeeding sections provided" and by inserting in lieu thereof the words "provided in sections one hundred and six and one hundred and seven of this Act";

(f)

Conveyancing (Amendment).

- (f) (i) by omitting subsection eight of section one hundred and six and by inserting in lieu thereof the following subsections : —

Sec. 106.
(Leasing powers of mortgagor and of mortgagee in possession.)

(8) Where the land comprised in any such lease is under the provisions of the Real Property Act, 1900, the lease shall be registered in accordance with the provisions of that Act.

(8A) Where the land comprised in any such lease is not under the provisions of the Real Property Act, 1900, the lease shall be executed by the lessee and registered under the Registration of Deeds Act, 1897.

- (ii) by omitting subsection ten of the same section and by inserting in lieu thereof the following subsection : —

(10) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding if—

(a) in so far as the lease, if granted, would comprise land under the provisions of the Real Property Act, 1900—a caveat has been lodged pursuant to section seventy-two of that Act in respect of the contract; and

(b) in so far as the lease, if granted, would comprise land not under the provisions of the Real Property Act, 1900—the contract has been registered pursuant to the Registration of Deeds Act, 1897.

(g)

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- Sec. 107.
(Powers (with a view to the grant of an authorised lease) for mortgagor and mortgagee in possession to accept surrenders of leases.)
- Sec. 109A.
(Savings as to certain mortgages.)
- Sec. 110.
(Powers incident to power of sale.)
- Sec. 115.
(Appointment, powers, remuneration, and duties of receiver.)
- Further amendment of Act No. 6, 1919.
Part VIII.
(Leases.)
- Sec. 128.
(Interpretation.)
- Sec. 129.
(Restrictions on and relief against forfeiture of lease.)
- (g) (i) by omitting from subsection one of section one hundred and seven the words "the last preceding section" and by inserting in lieu thereof the words "section one hundred and six of this Act";
- (ii) by omitting from subsection seven of the same section the words "the last preceding section" and by inserting in lieu thereof the words "section one hundred and six of this Act";
- (h) by inserting in paragraph (b) of subsection one of section 109A after the words "Companies Act, 1936," the words "or under Division 7 of Part IV of the Companies Act, 1961,";
- (i) by omitting from section one hundred and ten the words "the last preceding section" wherever occurring and by inserting in lieu thereof the words "section one hundred and nine of this Act";
- (j) by omitting from subsection three of section one hundred and fifteen the word ", distress,".
9. The Principal Act is further amended—
- (a) (i) by omitting from section one hundred and twenty-eight the words "Division 3" and by inserting in lieu thereof the words "Divisions 3 and 4";
- (ii) by omitting from the same section the definition of "Bankruptcy";
- (b) (i) by omitting from paragraph (c) of subsection six of section one hundred and twenty-nine the words "on the bankruptcy of the lessee, or";
- (ii)

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- (ii) by omitting from paragraph (e) of the same subsection the words "on the bankruptcy of the lessee, or";
- (iii) by omitting from the same paragraph the words "bankruptcy or";
- (iv) by omitting subsection seven of the same section;
- (c) by omitting from section one hundred and thirty-three the words "the official assignee" and by inserting in lieu thereof the words "The Official Receiver in Bankruptcy or the trustee of the estate";
- (d) by omitting subsection four of section 133B and by inserting in lieu thereof the following subsection :—
- (4) Paragraph (b) of subsection one, and subsections two and three, of this section do not apply to mining leases.
- (e) by inserting next after section 133B the following new Division :—

Sec. 133.
(Involuntary assignment no breach of covenant against assignment, &c.)

Sec. 133B.
(Provisions as to covenants not to assign, &c., without license or consent.)

New
Division 4
of Part VIII.

DIVISION 4.—*Options in leases.*

133C. In this Division—

Interpre-
tation.

- (a) a reference to an option contained in a lease is a reference to a right on the part of the lessee to require the lessor—
- (i) to sell, or offer to sell, to the lessee the reversion expectant on the lease;
- or
- (ii) to grant, or offer to grant, to the lessee a renewal or extension of the lease, or a further lease, of the demised premises or a part thereof, whether the right is conferred by the lease or by an agreement collateral to the lease; and

(b)

Conveyancing (Amendment).

- (b) a reference to a breach by a lessee of his obligations under a lease containing an option is a reference to a breach of those obligations by an act done or omitted to be done before or after the commencement of the Conveyancing (Amendment) Act, 1972, in so far as the act or omission would constitute a breach of those obligations if there were no option contained in the lease.

Application
of Division.

133D. (1) This Division applies to and in respect of leases granted before or after the commencement of the Conveyancing (Amendment) Act, 1972, and options contained therein.

(2) This Division has effect notwithstanding—

- (a) any stipulation to the contrary; and
(b) the provisions of subsection three of section fifty-three of the Real Property Act, 1900.

Breach of
certain
obligations
not to
preclude
lessee from
exercising
option
except in
certain cir-
cumstances.

133E. (1) In this Division “prescribed notice” means a notice in writing that—

- (a) specifies an act or omission; and
(b) states that, subject to any order of the court under section 133F of this Act, a lessor giving the notice proposes to treat that act or omission as having precluded a lessee on whom the notice is served from exercising an option contained in the lease.

(2) Where an act or omission that constituted a breach by a lessee of his obligations under a lease containing an option would, but for this section, have had the effect of precluding the

lessee

Conveyancing (Amendment).

lessee from exercising the option, the act or omission shall be deemed not to have had that effect where the lessee purports to exercise the option unless, during the period of fourteen days next succeeding the purported exercise of the option, the lessor serves on the lessee prescribed notice of the act or omission and—

- (a) an order for relief against the effect of the breach in relation to the purported exercise of the option is not sought from the court before the expiration of the period of one month next succeeding service of the notice ; or
- (b) where such relief is so sought—
 - (i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief ; or
 - (ii) where relief is granted upon terms to be complied with by the lessee before compliance by the lessor with the order granting relief, the lessee fails to comply with those terms within the time stipulated by the court for the purpose.

133F. (1) Relief referred to in section 133E of this Act may be sought—

- (a) in proceedings instituted in the court for the purpose ; or
- (b) in proceedings in the court in which—
 - (i) the existence of an alleged breach by the lessee of his obligations under the lease ; or

Court may grant relief from breach of certain obligations.

(ii)

Conveyancing (Amendment).

(ii) the effect of the breach from which relief is sought,
is in issue.

(2) The court may, in proceedings in which relief referred to in section 133E of this Act is sought—

- (a) make such orders (including orders affecting an assignee of the reversion) as it thinks fit for the purpose of granting the relief sought; or
- (b) refuse to grant the relief sought.

(3) The court may, in proceedings referred to in subsection two of this section, take into consideration—

- (a) the nature of the breach complained of;
- (b) the extent to which, at the date of the institution of the proceedings, the lessor was prejudiced by the breach;
- (c) the conduct of the lessor and the lessee, including conduct after the giving of the prescribed notice;
- (d) the rights of persons other than the lessor and the lessee;
- (e) the operation of section 133G of this Act;
and
- (f) any other circumstances considered by the court to be relevant.

(4) The court—

- (a) may make an order under subsection two of this section on such terms as to costs, damages, compensation or penalty, or on such other terms, as the court thinks fit;
and

(b)

Conveyancing (Amendment).

- (b) may make any consequential or ancillary order it considers necessary to give effect to an order made under that subsection.

133G. (1) Subject to any order of the court and to this section—

Lease to continue in force until issue decided.

(a) where—

- (i) an option is contained in a lease;
- (ii) the lessee exercises, or purports to exercise, the option; and
- (iii) the lease would, but for this paragraph, expire within the period of fourteen days after the exercise, or purported exercise, of the option.

the lease shall be deemed to continue in force until the expiration of that period;

(b) where—

- (i) a prescribed notice is duly served on a lessee; and
- (ii) the lease in respect of which the notice is served would, but for this paragraph, expire within the period of one month referred to in paragraph (a) of subsection two of section 133E of this Act,

the lease shall be deemed to continue in force until the expiration of that period; and

- (c) where, in relation to a lease continued in force under paragraph (b) of this subsection, relief referred to in section 133E of this Act is sought by a lessee, the lease shall,

subject

Conveyancing (Amendment).

subject to subsections two and three of this section, be deemed to continue in force until—

- (i) the proceedings in which the relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting the relief; or
- (ii) effect is given to orders made by the court in granting that relief in so far as they affect the lessor or relate to an assurance to the lessee.

(2) Paragraph (c) of subsection one of this section—

- (a) does not apply to or in respect of a lease that, but for that paragraph, would continue in force for a period longer than the period for which it is, by the operation of that paragraph, continued in force; and
- (b) does not, where a lessee fails to comply with terms imposed upon him pursuant to paragraph (a) of subsection four of section 133F of this Act, operate to continue the lease in force beyond the time of that failure by the lessee.

(3) Where, under subsection one of this section, a lease continues in force after the day on which, but for that subsection, it would expire—

- (a) the lease so continues in force subject to the provisions, stipulations, covenants, conditions and agreements in the lease (other than those relating to the term and the option contained in the lease) but without prejudice to any rights or remedies of the lessor or lessee in relation to the lease; and

(b)

Conveyancing (Amendment).

(b) the lessee, if the lease is of land under the provisions of the Real Property Act, 1900, and the lessee is in possession of the demised premises, has the protection of paragraph (d) of section forty-two of that Act as if the lease were a tenancy referred to in that paragraph.

(4) Subject to subsection five of this section, where, pursuant to an option contained in a lease continued in force under subsection one of this section, the lease is renewed or a new lease is granted, the period during which the lease was so continued in force shall be deemed to be part of the term for which the lease was renewed or the new lease granted, and any lease granted pursuant to an exercise of the option shall be expressed to have commenced when the lease containing the option would, but for subsection one of this section, have expired.

(5) Subsection four of this section does not apply to or in respect of a lease that stipulates for the commencement of any lease granted pursuant to an exercise of the option contained therein on a day that is later than the day on which the lease so granted would, but for this subsection, commence under subsection four of this section.

10. The Principal Act is further amended by omitting from the definition of "Dividends" in section one hundred and forty-two the figures "1899" and by inserting in lieu thereof the figures "1961".

Further
amendment
of Act No.
6, 1919.
Part XI.
(Apportion-
ment.)
Sec. 142.
(Interpre-
tation of
terms.)

11.

Conveyancing (Amendment).

Further amendment of Act No. 6, 1919.

Part XV.

(Executors and Administrators.)

Sec. 157A.

(Trustee or personal representative deemed entitled to sell and convey land resumed under statutory authority.)

11. The Principal Act is further amended by omitting paragraph (b) of subsection five of section 157A and by inserting in lieu thereof the following paragraph :—

(b) If the person who would have been entitled to the income is a person under mental disability the consent of the person charged by law with the management and care of the property of the person under mental disability or, if there is no person so charged, of the court, is sufficient authority to protect the trustees or personal representatives so applying the compensation money.

Further amendment of Act No. 6, 1919.

Part XVI.

(Powers of Attorney.)

Sec. 158.

(Application of Part XVI to land under Real Property Act, 1900.)

12. The Principal Act is further amended—

(a) by omitting from subsection two of section one hundred and fifty-eight the word “instruments” and by inserting in lieu thereof the word “dealings”;

Sec. 160.

(Powers of attorney to continue in force until notice of death or revocation.)

(b) by omitting subsections (4A) and (4B) of section one hundred and sixty;

Sec. 161.

(Irrevocable power of attorney for value.)

(c) by omitting from subsection one of section one hundred and sixty-one the words “lunacy, unsoundness of mind,” wherever occurring and by inserting in lieu thereof the words “mental disability”;

Sec. 162.

(Power of attorney made irrevocable for fixed time.)

(d) by omitting from subsection one of section one hundred and sixty-two the words “lunacy, unsoundness of mind,” wherever occurring and by inserting in lieu thereof the words “mental disability”.

13.

*Conveyancing (Amendment).***13.** The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XVII. (Purchasers : When Affected by Notice.)

- (a) by omitting subsection (1A) of section one hundred and sixty-four and by inserting in lieu thereof the following subsection : —

Sec. 164. (Restriction on constructive notice.)

(1A) Omission to search in any register or list kept by, or filed with, the Corporate Affairs Commission shall not of itself affect a purchaser of land with notice of any mortgage or charge.

- (b) (i) by omitting from paragraph (a) of subsection one of section one hundred and sixty-seven the words “upon the certificate of title or Crown grant comprising the land” and by inserting in lieu thereof the words “forbidding the registration of dealings affecting that land except in accordance with the provisions of the Voluntary Workers (Soldiers’ Holdings) Act, 1917”;

Sec. 167. (Protection of purchasers of land subject to Voluntary Workers (Soldiers’ Holdings) Act, 1917.)

- (ii) by omitting from paragraph (b) of the same subsection the words “other lands” and by inserting in lieu thereof the words “land not under the provisions of the Real Property Act, 1900,”

14. The Principal Act is further amended—

Further amendment of Act No. 6, 1919. Part XVIII. (Verification of Instruments: Statutory Declarations.)

(a)

Conveyancing (Amendment).

Sec. 168.
(Verification
of instru-
ments
executed out
of New
South
Wales.)

- (a) by omitting from subsection four of section one hundred and sixty-eight the word "instrument" and by inserting in lieu thereof the word "dealing";

Sec. 168A.
(Verification
of instru-
ments
executed out
of New
South
Wales by
persons
engaged on
war service.)

- (b) by omitting from subsection five of section 168A the word "instrument" and by inserting in lieu thereof the word "dealing".

Further
amendment
of Act No.
6, 1919.
Part XIX.
(Service of
Notices.)

15. The Principal Act is further amended—

Sec. 170.
(Regula-
tions
respecting
notices.)

- (a) by omitting from subsection (2A) of section one hundred and seventy the word "instrument" where secondly occurring and by inserting in lieu thereof the word "dealing";
- (b) by inserting in the same subsection after the word "instrument" where thirdly occurring the words "or dealing".

Further
amendment
of Act No.
6, 1919.
Part XX.
(Proce-
dure:
Orders:
Execu-
tion.)
Subst. sec.
175.

16. The Principal Act is further amended by omitting section one hundred and seventy-five and by inserting in lieu thereof the following section :—

Property
subject to
power may
be sold in
execu-
tion.

175. (1) The person to whom is directed a writ that authorises the taking in execution and sale of property of a judgment debtor may take in execution and sell property over which the judgment debtor

Conveyancing (Amendment).

debtor has a power of appointment that is exercisable by him for his own benefit without the assent of any other person.

(2) Where, under subsection one of this section, property the subject of a power of appointment is taken in execution and sold, the assurance to the purchaser operates as an exercise of the power.

(3) This section applies to land under the provisions of the Real Property Act, 1900.

17. The Principal Act is further amended by omitting from section one hundred and seventy-six the words "or certificated conveyancer" wherever occurring.

Further amendment of Act No. 6, 1919.
Part XXI.
(Adoption of Act.)
Sec. 176.
(Protection of solicitors, trustees, &c., acting under this Act.)

18. The Principal Act is further amended—

Further amendment of Act No. 6, 1919.
Part XXII.
(Miscellaneous.)

- (a) by omitting from subsection two of section one hundred and eighty-one the word "instruments" and by inserting in lieu thereof the word "dealings";
- (b) by omitting from subsection four of section 181A the word "instruments" and by inserting in lieu thereof the word "dealings";

Sec. 181.
(Construction of expressions used in deeds and other instruments.)

Sec. 181A.
(Construction of expressions "right of carriage way" and "right of footway".)

(c)

Conveyancing (Amendment).

Sec. 181B.
(Construction of expression "party wall" in assurances of land.)

- (c) by omitting from subsection three of section 181B the word "instruments" and by inserting in lieu thereof the word "dealings";

Sec. 184.
(Committee for framing short forms.)

- (d) by omitting from subsection one of section one hundred and eighty-four the words "the Council of the Bar and the Incorporated Law Institute" and by inserting in lieu thereof the words "the New South Wales Bar Association and The Law Society of New South Wales".

Further amendment of Act No. 6, 1919. Part XXIII. (Registration.)

19. The Principal Act is further amended—

Sec. 188.
(Protection of purchasers against non-registered writs, orders, &c.)

- (a) by inserting at the end of section one hundred and eighty-eight the following new subsection :—

(3) This section does not apply, and shall be deemed never to have applied, in respect of land under the provisions of the Real Property Act, 1900.

Sec. 191.
(Application of Division to land under Real Property Act, 1900.)

- (b) by omitting from subsection one of section one hundred and ninety-one the words "entry in the register book under the said Act" and by inserting in lieu thereof the words "recording in the Register kept under that Act";

Sec. 195.
(Registration of sequestration orders, &c., made in bankruptcy.)

- (c) by omitting section one hundred and ninety-five;

(d)

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(d) by omitting section 195A;

Sec. 195A.
(Registration of notices under Commonwealth Bankruptcy Act.)

(e) (i) by inserting in subsection one of section one hundred and ninety-six after the word "expressions" the words "' consolidated lot,'";

Sec. 196.
(Registration of plans.)

(ii) by inserting in subsection two of the same section after the word "plan" where firstly occurring the words "of a consolidated lot or";

(iii) by inserting in the same subsection after the words "plan of the" the words "consolidated lot,";

(iv) by inserting in subsection three of the same section after the word "subdivision" wherever occurring the words "or other lawful division of land";

(v) by inserting next after subsection three of the same section the following new subsection :—

(3A) The Registrar-General—

(a) may accept lodgment in his office of a plan other than a plan referred to in subsection two or three of this section, whether or not it complies with subsection four of this section;

(b) may refuse to accept lodgment in his office of—

(i) a plan of land under the provisions of the Real Property Act, 1900, that, in his opinion,

illustrates

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illustrates without material change a lot or lots in a plan registered or recorded in his office that constitutes a current plan under section 327AA of the Local Government Act, 1919; or

- (ii) a plan of land not under the provisions of the Real Property Act, 1900, unless it is a plan of subdivision or is lodged for the purposes of a primary application under that Act; and
- (c) may refuse to record pursuant to subsection (9A) of this section a plan referred to in paragraph (a) or (b) of this subsection notwithstanding that he accepted it for lodgment in his office.
- (vi) by omitting from subsection four of the same section the word "Every" and by inserting in lieu thereof the words "Subject to subsection (3A) of this section, a";
- (vii) by omitting paragraph (c) of the same subsection and by inserting in lieu thereof the following paragraph :—
 - (c) be certified, in the form prescribed under the Surveyors Act, 1929, by a surveyor registered under that Act, unless the Registrar-General dispenses with the certificate.
- (viii) by omitting the proviso to the same subsection;
- (ix)

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- (ix) by omitting paragraph (a) of subsection five of the same section and by inserting in lieu thereof the following paragraph :—

(a) A plan lodged pursuant to this section (other than a plan referred to in paragraph (c) or (g) of the definition of “plan of subdivision” in subsection one of section 327AA of the Local Government Act, 1919) which, on being registered or recorded in the office of the Registrar-General will become a current plan under that section, or a plan that bears a statement—

- (i) of intention to dedicate specified land as a public road, as referred to in subsection one of section three hundred and thirty-six of that Act;
- (ii) of intention to create a public reserve, as referred to in section 340D of that Act;
- (iii) of intention to create a drainage reserve, as referred to in section 340E of that Act; or
- (iv) of intention to create an easement or restriction as to user, as referred to in subsection two of section 88B of this Act,

shall be signed by every person having sufficient estate or interest to transfer or convey the land comprised in the proposed current plan or, as the case may be, the land to which the statement relates.

- (x) by omitting from subparagraph (i) of paragraph (b) of the same subsection the words “the folium of the register-book constituted by” and by inserting in lieu thereof the words

“the

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“the folio of the Register kept under the Real Property Act, 1900, in which is recorded particulars of”;

- (xi) by inserting in the same subparagraph after the words “in the” the words “current plan,”;
- (xii) by omitting subsection six of the same section;
- (xiii) by omitting subsection seven of the same section and by inserting in lieu thereof the following subsection :—

(7) Every plan lodged under this section shall contain a statement showing whether—

- (a) any, and, if any, which of the roads shown on the plan are intended to be dedicated to the public; and
 - (b) any public reserve or drainage reserve shown on the plan is intended to be created by registration of the plan.
- (xiv) by omitting subsection eight of the same section;
 - (xv) by omitting subsection nine of the same section and by inserting in lieu thereof the following subsections :—

(9) (a) The Registrar-General shall not register a plan lodged under this section unless—

- (i) the particulars of title of the land in the plan have been correctly represented to the Registrar-General;
- (ii) the person who lodged the plan indicated on whose behalf it was lodged; and
- (iii) the Registrar-General is satisfied that the plan is in registrable form.

(b)

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(b) A plan lodged under this section is not in registrable form unless—

- (i) it complies with the requirements of this or any other Act relating to such a plan; and
- (ii) any boundary shown on the plan that existed before the plan was made is correctly defined therein.

(c) The Registrar-General may assume, and shall be deemed always to have been entitled to assume, that a person who lodges a plan under this section has authority from all persons having an interest in the land comprised in the plan—

- (i) to lodge it with the Registrar-General;
- (ii) to uplift it for amendment or to withdraw it from registration and, in either case, to give a receipt therefor; and
- (iii) to attend to all other matters which may arise in the course of registration of the plan within the office of the Registrar-General with respect thereto.

(d) The Registrar-General may reject a plan lodged under this section which is not in registrable form and may retain some or all of the fees paid upon lodgment of that plan.

(e) Subject to paragraph (f) of this subsection, where the Registrar-General is satisfied that a plan lodged in pursuance of subsection two or three of this section is in registrable form he shall register it by affixing his seal thereto and may issue such certificates of title in pursuance thereof as he considers appropriate.

(f) The Registrar-General may refuse to register a plan lodged under this section of

land

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land under the provisions of the Real Property Act, 1900, unless—

- (i) any relevant grant or certificate of title has been lodged for the purpose of enabling the plan to be registered; or
- (ii) where any relevant grant or certificate of title has not been so lodged but is otherwise in the custody of the Registrar-General, the Registrar-General has given to such persons as he thinks fit written notice of his intention to use the grant or certificate of title for the purpose of registering the plan and none of those persons, within a time limited in the notice for the purpose, notifies the Registrar-General in writing of his refusal to permit the grant or certificate of title so to be used.

(9A) Upon lodgment of a plan of a type which the Registrar-General is not by this Act required to register he may record the plan in such manner as to him appears appropriate.

- (xvi) by omitting subsection ten of the same section;
- (xvii) by inserting in subsection twelve of the same section after the word "registered" the words "or recorded";
- (xviii) by omitting subsection fourteen of the same section;
- (xix) by omitting from subsection fifteen of the same section the word "instrument" and by inserting in lieu thereof the word "dealing";

Sec. 196A.
(Register
of resump-
tions.)

- (f) (i) by inserting in subsection three of section 196A after the word "land" the words "not under the provisions of the Real Property Act, 1900,";

(ii)

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- (ii) by inserting next after the same subsection the following new subsection : —

(3A) Where a resumption is rescinded, the Crown or other authority that rescinds the resumption shall forthwith lodge with the Registrar-General notice of the rescission that, in so far as the resumption rescinded related to land under the provisions of the Real Property Act, 1900, is in the form approved by the Registrar-General under that Act.

- (iii) by omitting subsection four of the same section and by inserting in lieu thereof the following subsections : —

(4) Upon receipt of a notice of resumption of land that is not under the provisions of the Real Property Act, 1900, or notice of rescission of such a resumption, the Registrar-General shall record particulars of the resumption or rescission in the Register of Resumptions.

(4A) Upon receipt of a notice of rescission of a resumption of land that is under the provisions of the Real Property Act, 1900, the Registrar-General—

- (a) shall record the rescission in the Register kept under that Act; and
- (b) in so far as the notice relates to land comprised in a certificate of title issued under subsection two of section 31A of that Act, or in a certificate of title replacing that certificate of title, being land that at the time of its resumption was not under the provisions of that

Act,

Conveyancing (Amendment).

Act, shall cancel that certificate of title wholly or partially, as the case may require, and shall record particulars of the rescission in the Register of Resumptions.

(4B) Land comprised in a certificate of title cancelled under paragraph (b) of subsection (4A) of this section ceases, upon the cancellation, to be land under the provisions of the Real Property Act, 1900.

(iv) by omitting subsection five of the same section and by inserting in lieu thereof the following subsection : —

(5) With such modifications as may be necessary, this section applies to and in respect of the compulsory acquisition of land under an Act of the Parliament of the Commonwealth and so applies as if—

- (a) such an acquisition were a resumption ;
and
- (b) the words “shall forthwith” were omitted from subsections three and (3A) and the word “may” were inserted in lieu thereof.

Sec. 197.
(Official searches.)

(g) by omitting from section one hundred and ninety-seven the words “or certificated conveyancer” wherever occurring ;

Sec. 202.
(General rules under this Part of this Act as to registration and fees.)

(h) by omitting subsection (1A) of section two hundred and two.

Conveyancing (Amendment).

20. The Principal Act is further amended—

Further
amendment
of Act No.
6, 1919.

(a) by omitting the matter distinguished by the figure "4." in Column one and Column two of Part II of Schedule IV and by inserting in lieu thereof the following matter :—

4. And to maintain and leave the premises in good repair (having regard to their condition at the commencement of the lease), reasonable wear and tear, war damage, and damage by fire, lightning, flood and tempest excepted.

4. And also that the lessee will during the term, when, where, and so often as the need shall be, but having regard to the condition of the demised premises at the commencement of the lease and excepting reasonable wear and tear, war damage, and damage by fire, lightning, flood and tempest, occurring within the term—

(a) well and sufficiently maintain, amend, and keep; and

(b) at the expiration or sooner determination of the term peaceably surrender and yield up unto the lessor,

in good and substantial repair the demised premises, including all appurtenances, buildings, erections and fixtures belonging to the demised premises, or at any time within the term lawfully made or erected by the lessor upon or within the demised premises.

(b) by omitting from Column one and Column two of the same Part of the same Schedule the matter distinguished by the figure "5."

21. (1) The Principal Act is further amended by omitting subparagraph (ii) of paragraph (e) of subsection five of section one hundred and ninety-six and by inserting in lieu thereof the following words :—

Further
amendment
of Act No.
6, 1919.
Statute
law
revision.

(ii) when the person liable for damages is dead, bankrupt, or insolvent, or cannot be found within the jurisdiction,

such

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such damages with costs of action may be recovered out of the Closer Settlement Fund or the Consolidated Revenue Fund by action against such person as the Governor may appoint as nominal defendant.

(2) The amendment made by subsection one of this section shall be deemed to have commenced on the fifteenth day of June, one thousand nine hundred and sixty-four.

Amendment
of Act No.
14, 1925.
Sec. 75.
(Deceased
mortgagee.)

22. The Trustee Act, 1925, is amended by inserting next after subsection three of section seventy-five the following new subsection :—

(3A) With such modifications as may be necessary, subsections (1A), (1B) and (1C) of section ninety-eight of the Conveyancing Act, 1919, apply to and in respect of an order under this section and the mortgage to which it relates and so apply—

- (a) as if a reference in those subsections to a determination by the court were a reference to an order under this section; and
- (b) as if the words “, except to the extent that it is extinguished or reduced by the operation of this section,” were omitted from subsection (1C) of that section.

Amendment
of Act No.
25, 1900.

23. The Real Property Act, 1900, is amended—

Sec. 3.
(Interpre-
tation.)

(a) by inserting in the definition of “Approved form” in paragraph (a) of section three after the word “this” the words “or any other”;

Sec. 144.
(Regula-
tions.)

(b) by inserting at the end of section one hundred and forty-four the following new subsection :—

(2) In subsection one of this section, a reference to “the administration of this Act” includes a reference to the administration of any other Act in

Conveyancing (Amendment).

so far as that other Act affects the functions of the Registrar-General with respect to land under the provisions of this Act, whether or not that other Act makes provision for matters to be prescribed thereunder with respect to that land.

24. (1) The provisions of section ninety-eight of the Principal Act, as amended by this Act, and of section seventy-five of the Trustee Act, 1925, as so amended, apply to and in respect of applications made under those sections, as enacted before the commencement of this Act, where the applications are heard and determined after that commencement.

Application
of certain
amend-
ments.

(2) In paragraph (b) of subsection one of section 133F of the Principal Act, as amended by this Act, a reference to proceedings includes a reference to proceedings instituted before, and heard and determined after, the commencement of this Act.

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 29th March, 1972.*

