

## **Draft Table of Contents for Uniform Torrens Title Act**

### **Introductory note**

The following is a suggested “table of contents” for a Uniform Torrens Title Act.

Its purpose is two-fold:

- (1) to identify the main areas that would need to be covered; and
- (2) in doing so, to demonstrate that, given the political will and a spirit of co-operation, it should not be difficult to develop uniform Torrens title legislation that will meet the requirements of all Australian jurisdictions.

The document draws heavily on Torrens legislation enacted relatively recently in Australia, especially in Queensland and the Northern Territory.

It also endeavours to clarify doubts on some aspects of the Torrens statutes highlighted in recent case law on certain points (for example, whether “volunteers” obtain indefeasibility of title).

The document is very much a draft. It will need to be fleshed-out.

In some areas, further discussion will be required: for example, to decide whether the system should recognise adverse possession; whether paper certificates of title are to be issued; and whether leases should be registered (and if so, whether exceptions are to be made).

However, these areas constitute only a small proportion of any Torrens title legislation.

The great bulk of the Torrens legislation throughout Australia is already reasonably uniform.

Differences tend to be more in drafting than in principle, so most of this table of contents should be non-controversial.

It goes without saying that the uniform legislation should be drafted in modern, plain language, with a minimum of legalese.

For convenience, a list of section headings appears immediately below. It is then followed by the more detailed table of contents.

### ***The Objective of the Act***

The overriding objective should be a uniform design and content of a certificate of title and search statement.

Certificates of title and search statements vary greatly as to the information they contain and where the information is placed within the document.

Uniformity between the different jurisdictions would be a great step forward.

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A review of the information contained in certificates of title and search statements and their layout is required, for example:

- (a) each interest registered on title should be grouped as to the type of interest. This would alleviate the problem in large developments where multiple leases are registered but an instrument like a mortgage is buried in the middle of the search and difficult to identify;
- (b) corporate ACNs and ABNs should be used to identify corporations; and
- (c) the conditions and restrictions in a Crown grant or parent title must be carried forward to subsequent titles with the same wording ( or removed if they become redundant).

### *The Schedules*

This is the first step to the drafting of the Uniform Torrens Title Act and, following that, uniformity of all property laws and procedures.

At the end of the document is a schedule, which will outline transitional provisions to implement the Act in each jurisdiction through a CLERP-type process.

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## SUGGESTED UNIFORM TORRENS STATUTE

### PREAMBLE

This model Uniform Torrens Act has been developed as a result of significant discussion and collaboration by the members of the Property Law Reform Alliance (the “Alliance”).

The Alliance is a coalition of legal and property industry associations dedicated to achieving uniformity of property laws and procedures.

This model Act aims to achieve the first, and some of the most significant, stages of property law reform, with many more to come.

It focuses predominantly on creating a nationally consistent leading practice system of property titling, based on Torrens Title, as well as clarifying the laws needed for electronic conveyancing.

This table of contents aims to identify the issues that need to be addressed by real property law.

It is a living document that will allow stakeholders to debate proposals and contribute to reform, and the Alliance expects that changes will occur during the drafting process.

The Alliance welcomes feedback from interested stakeholders, policy makers, and the public.

## PART 1 — PRELIMINARY

### 1 Title

### 2 Commencement

### 3 Definitions

- Definition of 'paper title' (duplicate title) and 'electronic title' need to be included here.

### 4 Purpose/Objects of Act

- To provide a system for the secure, efficient and cost effective registration of a guaranteed title to land.

### 5 Relationship to other Acts

- This would include provision to the effect that the protections of this Act are not to be affected by other Acts, unless the other Acts expressly so provide. The purpose is to avoid litigation over whether later Act impliedly repeals indefeasibility etc.
- Act is to be read as not overriding general legal principles governing land ownership unless it is clearly inconsistent with those principles – unless it's a complete property law code; it has to be read with underlying general legal principles.
- However, given that most land in Australia is now under Torrens title, the time may have come to develop a unified property statute, dealing with both general principles of property law and registration.
- Act would need to take into account the needs of electronic conveyancing.

## PART 2 — THE REGISTRAR

### 6 Powers and functions of Registrar

- List the powers and functions (most would be standard: eg, to compel production of documents, give notices, correct register)
- The Registrar should be obliged to register if the instrument is in registrable form and the Registrar has no notice that the transaction is illegal or misconceived.
- In relation to power to correct register:
  - impose a time limit on exercise of the power (eg, power to correct is lost against a person who acquires registered interest without notice of the error), but still allow a right to compensation.
  - Specify whether power to correct is discretionary or mandatory.
- Challenging decisions of the Registrar-General – Any person dissatisfied with Registrar's decision:

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- can ask Registrar to give reasons for decision; and
- if dissatisfied with Registrar's reasons, may seek review in the Court.
- Registrar may state case for opinion of a Court of competent jurisdiction on any matter arising out of administration of the Act

### **7 Seal of office and signature**

### **8 Obligation to keep the Register**

## **PART 3 — THE REGISTER**

### *Division 1 — General*

### **9 Form of Register**

- Including electronic

### **10 The contents and availability of the register**

- List the contents of the register (would be standard: eg, folios, dealings, plans, terminology)
- The register should be open to the public.
- Historic searches should be allowed.
- Provision for official searches by Registrar
  - Register should only be used for the recording of proprietorship interests in the land, and other interests could be on the database with links to the title.

### **11 Information Registrar must record in Register**

- Must be aligned with section 18

### **12 Information Registrar may record in Register**

- Must be aligned with section 18

### *Division 2 — Folios of the Register*

### **13 Form of folio of Register**

- Separate folio for each parcel of land [i.e. land identifier]

### **14 Contents of folio of Register**

- Adopt the Queensland model, which dispenses with automatic paper certificates of title, but allows for optional certificates. Review the appropriateness of this approach in 10 years.
- Procedural issues will require consultation with the Registrars, including:

- the process for identification [Procedural issue outside of legislation, should be resolved with the Registrars – e.g. NT need for qualified witnesses]);
- how the relevant proprietorship information is displayed and is accessible. It must be a system that is simple, accessible, convenient and uniform;
- the best practice for deciding how to identify registered proprietors and parties with authority to deal;
- alignment with electronic titles. Any electronic system must be better and more cost effective than the paper title system if it is to be replaced. (Alignment with NECS or NSW/Vic/Qld models); and
- the form of identification (linking with assurance process and risk) and resolved in Act / Regulations.

**15 New folios of Register on subdivision or consolidation**

**16 Qualified folios of Register**

- This would apply in jurisdictions where land still remains to be converted from common law (old system) to Torrens. Purpose is to allow “staged” conversion to Torrens.

**17 Limited folios of Register**

- This would apply only where the Registrar was not prepared to certify boundaries.
- Boundaries
  - The Act should include a facility to resolve boundary issues and to determine issues of “middle line” rule, accretion and erosion.
  - The Register should be a conclusive register of boundaries for an owner – no other person can claim a right (with the exception of adverse possession).

*Division 3 – Registration of instruments*

**18 Need for registration**

- Usual provision that no title passes unless instrument registered.
- The following interests would be registrable, and unless registered do not have the benefit of the Act (subject to the exceptions in the Act):
  - fees simple;
  - leases;
  - mortgages;
  - easements;
  - profits à prendre;

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- carbon sequestration rights;
- covenants;
- charges;
- life interests;
- remainder and reversion interests;
- water rights;
- mining leases;
- pastoral leases;
- any other interests which statute allows to be registered, eg:
  - native title, where determined, etc; and
  - Crown land. The register should specify whether the Crown land is reserved land and any other relevant particulars such as: the identity of the Crown trustee or committee of management of the land, the purposes of the reservations and any particular conditions of the reservation.
- transmission applications;
- notice of death of joint tenant;
- vesting orders - Vesting orders will change the Register when they are given effect. Nothing further is required.
- The Register should not be a register of trusts.
  - There are divergent practices between the jurisdictions regarding recording of instruments which refer to trusts. This causes considerable difficulty especially with finance transactions that cross jurisdiction borders. It should be possible to register documents that refer to trusts so long as a party dealing with the registered proprietor obtains good title notwithstanding notice of the trusts (with the usual exception for fraud).

### **19 Registrar's duty to register**

- As per section 6

### **20 Method and time of registration**

- Retain existing practice of requiring standard forms, to preserve simplicity of system. Forms should be uniform, consistent and simple.
- Documents to be in "registrable form", but keep requirements of "registrable form" simple.
- Provision for standard terms documents to reduce clutter in the register
- Registrar be given power to correct "patent errors"

- Once documents are in “registration queue” and in registrable form, documents proceed to registration in order of lodgement, unless withdrawn.
- Caveats cannot prevent registration of dealings already in registration queue

**21 Order of registration**

**22 Priority of registered instruments**

**23 Registered instrument to have effect of deed**

**24 Instrument for priority variation**

*Division 4 – Consequences of registration*

**25 Effect of registration**

- On registration, the interest is created/passed, and vests.
- Conclusiveness of register
  - Immediate indefeasibility of title [exceptions stated below] is preferred to deferred indefeasibility even though this may have practical effects for some financial institutions and individuals. However, certainty of title is to be preferred where the balance is between the party entitled to the land and the party who should be entitled to compensation.
  - It is important that there is a simple rule dealing with the consequences of immediate indefeasibility of title (such as where a subsequent caveat is lodged which may affect a mortgagee's power of sale).
- Registration be expressed to be conclusive as to land boundaries (as well as to ownership of interests in land), as per section 18.
  - Priority by registration:
  - registered interest defeats unregistered
  - earlier registered defeats later registered
  - Purchaser not to be affected by notice of unregistered interests (as per current law)
- The nature of indefeasibility should be “immediate”.
- “Volunteers” should have same degree of indefeasibility as purchasers for value, as occurs in NSW and WA

**26 Conclusiveness of registration**

- Registration should be conclusive as to boundaries, as per section 18.
- Include provisions re medium filum rule (“middle line”).

**27 Conclusiveness of information in Register**

**28 Interest of registered proprietor paramount**

- This is the key “indefeasibility of title” provision. It would provide for “immediate indefeasibility”. Also that persons are not affected by notice of unregistered interests.
- As per section 27.

**29 Exceptions to indefeasibility**

- Would include:
  - fraud (on part of registered holder)
  - fraud in relation to volunteers’ interests (see s.42 & s.45 NSW)
  - prior registered interests [standard provision]
  - existing entries on the register [standard provision]
  - exceptions, reservations, etc in Crown grants;
  - land included in folio by misdescription [standard provision]
  - equitable obligations in nature of “rights in personam”;
  - leases not exceeding 3 years, including period under any option to renew, where tenant in possession;
  - where 2 or more folios exist for same land; earlier prevails;
  - where 2 or more persons registered of proprietors of the same interest; earlier prevails;
  - prescriptive easements – the form is to be determined; .
  - omitted easements and profit à prendre [These should be dealt with in a similar way to NSW’s Conveyancing Act 1919, section 88K]
  - Successfully supported adverse possession application.
- Should also apply to adverse possession.

*Division 5 – Unregistered interests*

**30 Nature and priority of unregistered interests**

- Should continue to recognise unregistered interests, but through the recognition of a caveat:
  - A simple process for removal of caveats should be established. It should also be standard that a lapse period could be nominated when a caveat was lodged, so that it would lapse if not renewed at that time.
  - There should be no problem with allowing any interest to be caveatable if all relevant parties agree to have such a caveat applied
  - Should define who can lodge caveat and in respect of what interests

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- Liability for lodgement without reasonable cause
- Caveats should last until challenged by owner of land affected (eg, as per “lapsing notice” provision in NSW)
- Prohibition against lodging successive caveats based on same interest and same facts, unless court allows or proprietor consents
- Minimal formal requirements – and court to have power to overlook breaches of formal requirements
- Only the caveator can withdraw caveats
- Consider “priority notice” provision, along lines of Tasmania – a caveat-like;
- Protect interest of purchaser between completion and registration, along lines of NSW s 43A (and adopt the “old system protection” view of s 43A, as per Taylor J in IAC Finance v Courtenay).

### **PART 4 — CERTIFICATES OF TITLE**

#### **31 Issuing certificate of title**

- Contents of CT.

#### **32 Request -to issue certificate of title**

#### **33 Delivery of certificate of title**

#### **34 Issuing replacement certificate of title**

#### **35 Evidentiary effect of certificate of title**

### **PART 5 — CO-OWNERS**

#### **36 Registering co-owners**

- Presumption in favour of tenants in common in equal shares.

#### **37 Effect of registration as “joint proprietors”, and “no survivorship”**

- [Redundant] Only required in those jurisdictions where these phrases are used (or were used historically).
- Separate folios for the separate interests of tenants in common?

#### **38 Unilateral severance of joint tenancies**

- Provisions regulating right of joint tenant to sever unilaterally.  
The severance of joint tenancies by registration of an instrument for severance by one registered proprietor should be in addition to the existing methods of severance.
- To clarify power to sever joint tenancy unilaterally; Registrar needs to give prior notice after lodgement

## PART 6 — TRANSFERS

### 39 Registering transfer

- To apply to land and “interests in land”, eg lease or mortgage.

### 40 Requirements for transfer to be registered

### 41 Effect of registration of transfer

- All rights and obligations also pass.

### 42 Transfer of mortgaged land

- Transferee becomes primarily liable under the mortgage.

### 43 Transfer of mortgage

### 44 Transfer under statutory vesting

## PART 7 — LEASES

### 45 Registering lease

- Leases to be registered. Legislation should provide:
  - registration protects options to purchase (and also options to renew)
  - for registration of variation (including provision that variation does not effect a surrender of the lease)
  - covenants run with lease and with reversion (as per existing property law statutes)
  - for appropriate recordings of termination or surrender of lease
- A plan is not required for Registration of a lease.

### 46 Requirements for lease to be registered

- All leases of three years or more must be registered. Registration of leases under 3 years is voluntary.

### 47 Variation of registered lease

- To follow NSW s 55A; one purpose is to overcome argument that variation causes surrender and regrant.
- Unless a lease is registered, you shouldn't have to deal with a variation unless it is registered.

### 48 Whether lease, or variation, binds mortgagee

- The method of registration and the procedure for consent by mortgagees must be made easier, simpler and cheaper. For example, it should be possible to register leases without the mortgagee being required to produce the title and without a mortgagee's consent (but the mortgagee's

priority would be maintained). Electronic conveyancing may assist with this process.

- A lessor and lessee should have the right to change documentation without going to get mortgagor/ee permission. However, this would only be binding on a mortgagee if it has their consent.
- The consent of the mortgagee to a lease must be confirmed by signing on the front page of the lease.
- Alternatively production of a certificate of title by the mortgagee to enable registration of the lease is deemed mortgagee consent.
- Mortgagor's and mortgagee's rights to lease should be available. The mortgagee's rights should exist unless precluded by the mortgage or any other contract; if mortgaged property is leased, then the variation of lease binds mortgagee and any purchaser from the mortgagee if the variation is consented to.

**49 Registration of options to renew or purchase**

- Registrar must record.

**50 Expiry of lease**

- Registrar must record.

**51 Termination of lease following tenant's default**

- Registrar must record.

**52 Surrender of lease**

- Registrar must record.

**53 Implied powers of lessors**

- Only in those jurisdictions where not sufficiently covered by general property statute.

**PART 8 — MORTGAGES**

**54 Nature of mortgage**

- Note: some other aspects of mortgages covered under Part 6 (Transfers).
- Provisions along lines of present legislation:
  - nature of Torrens title mortgage;
  - variations of mortgage;
  - priority of mortgages

**55 Requirements for mortgage to be registered**

- Mortgages should be registered. The legislation should only give power of sale and other benefits to registered mortgages. The legislation should

authorise a mortgagee to lease the land. The Registrar should have the power to make foreclosure orders.

**56 Mortgagor's right to inspect CT**

- While there is a paper title, anyone with a right to it should be able to demand to see it.

**57 Mortgagee's powers**

**58 Procedure on default**

- Notices, etc
- Provisions regarding default — along lines of present legislation:
  - registered mortgagee's rights: possession on default, right to demand rents and profits, sale on default, appointment of receiver
  - notice requirements
  - application of proceeds of sale
  - protection of purchaser
  - provisions should not be extended to unregistered mortgages.

**59 Power of sale**

- Manner of exercise; effect of transfer following sale.

**60 Liability of mortgagee in possession**

**61 Discharge of mortgage**

**62 Foreclosure**

- Procedure and order by Registrar.
- Foreclosure: Registrar to have power to make foreclosure "order" (along lines of present NSW provisions)

**PART 9 — STATUTORY CHARGES**

**63 Registration of statutory charges**

- Purpose: to allow public authorities with benefit of statutory charge, to register the charge. Only has effect when registered. The authority must provide a discharge on payment. It ranks subsequent to a prior registered interest.

## PART 10 — EASEMENTS

### *Division 1 — Creation of easements*

#### **64 Methods of creating easements under this Part**

- “Easements in gross” should be included, but limited to public authorities, or statutory bodies. Expanding this right to individuals is an issue for policy discussion.

#### **65 Creation by registered instrument of easement**

- Both dominant and servient tenements of easements should be registered as the general policy position.
- It is vital that easements are easily identifiable.

#### **66 Creation by plan of subdivision**

- For those jurisdictions where this is not already covered.

#### **67 Creation by prescription or implication**

- Prescriptive or implied easements should be recognised in a Torrens system, but only with appropriate safeguards.
- Proven application to the Registrar, like a possessory title.

#### **68 Creation by court order**

- Power of Registrar to register Court-created easements.

### *Division 2 — Common ownership*

#### **69 Easement valid despite common ownership of land benefited and burdened**

- For those jurisdictions where this is not already covered.

### *Division 3 — Variation or extinguishment of easements*

#### **70 Variation or release by parties**

#### **71 Cancellation by Registrar**

- On grounds such as expiration by time, or abandonment.
- Provision for removing easements that have been abandoned.
  - Registrar to have the power to remove easements on proof of non-use for 20 years.).

#### **72 Court order varying or extinguishing easement**

- To give Registrar power to record effect of court order.
- If an easement has been “abandoned” in accordance with common law principles, but yet is still recorded on register, an incoming purchaser of the benefited land should be able to enforce the easement.

- There should be user-friendly processes for the removal of easements.

## **PART 11 — COVENANTS**

### *Division 1 — Creation of covenants*

#### **73 Positive covenants permitted**

- Abolish general law principle that only negative covenants can run with land.

#### **74 Methods of creating covenants under this Part**

- Overview of following sections. There should be “covenants in gross”, but only for statutory bodies.

#### **75 Creation by registered instrument of covenant**

- Covenants to be registered, not merely recorded (as in some States).
- There needs to be provision for removing covenants that have been abandoned (Give Registrar the power to remove on proof of non-enforcement of breach for 20 years).

#### **76 Creation by plan of subdivision**

- For those jurisdictions where this is not already covered.

### *Division 2 — Common ownership*

#### **77 Covenant valid despite common ownership of land benefited and burdened**

- For those jurisdictions where this is not already covered.

### *Division 3 — Variation or extinguishment of covenants*

#### **78 Variation or release by parties**

#### **79 Cancellation by Registrar**

- On grounds such as waiver.

#### **80 Court order varying or extinguishing covenant**

- To give Registrar power to record effect of court order.

*Division 4 – Duration of covenant*

81 **Duration of covenant**

**PART 12 — PROFITS A PRENDRE**

*Division 1 – Creation of profits à prendre*

82 **Creation by registered instrument**

*Division 2 – Common ownership*

83 **Profit à prendre valid despite common ownership of land benefited and burdened**

- For those jurisdictions where this is not already covered.

*Division 3 – Variation or extinguishment of profits à prendre*

84 **Variation or release by parties**

85 **Cancellation by Registrar**

- On grounds such as expiration by time, or abandonment. Should not be automatic removal.

**PART 13 — CARBON SEQUESTRATION RIGHTS**

- [see WA Division 2A]

*Division 1 – Creation of carbon sequestration*

86 **Creation by registered instrument**

*Division 2 – Common ownership*

87 **Carbon sequestration rights valid despite common ownership of land benefited and burdened**

- For those jurisdictions where this is not already covered.

*Division 3 – Variation or extinguishment of carbon sequestration rights*

88 **Variation or release by parties**

89 **Cancellation by Registrar**

- On grounds such as expiration by time, or abandonment. Should not be automatic removal.

**PART 14 — TRUSTS**

90 **No notice of trusts in Register**

- The Register should not be a register of trusts.

**91 Vesting orders in relation to trusts**

- No effect until registered; Registrar may register.

**92 Dealing with trustee**

- Person dealing with trustee entitled to assume legal and beneficial owners.

**PART 15 — DECEASED ESTATES**

**93 Registration of personal representative**

**94 Notice of death**

**PART 16 — BANKRUPTCY**

**95 Transmission on bankruptcy**

**PART 17 — WRITS**

**96 Facility to request to register writ**

**97 Effect of registration of writ**

- Note: will clarify Black v Garnock issues.

**98 Cancellation of registration of writ**

**99 Discharge or satisfaction of writ**

**100 Transfer of land sold in execution**

- [PLRA to reconsider this anachronism in the future]
- For a bona fide purchaser or mortgagee to undertake search on date of settlement, s.43A (NSW) protection provided if search undertaken on day of settlement.

**PART 18 — ADVERSE POSSESSION**

**101 Title by adverse possession**

- Should allow title by adverse possession. This section should provide steps to be followed; and also provide transitional provisions, which will need to vary from jurisdiction to jurisdiction, depending on current position in the jurisdiction.
- Rights to accrue but not against a third party until the possessory rights are registered as full proprietorship.
- There should be a relative simple process for changing the title if the requisite evidence is available and is uncontested or is contested and is resolved. Time does not begin to run anew.

## PART 19 — NOTICES OF INTEREST

### 102 Issue and registration of notices of interest

- Caveats and priority notices both seek to achieve substantially the same outcome, that is they give notice to the world of the claimants interest and protect against subsequent inconsistent claims or registered interests.
- Caveats are generally expensive for both fees and process, and are difficult and inefficient.
- Priority notices do not have all the advantages of a caveat.
- A notice of interest incorporating the best points of each and must ensure that the system is quick, efficient, inexpensive and effective.
- We propose changing the name to Notice of Interest to ensure no confusion with caveats and priority notices.
- Notices of interest will lapse on registration of the interest that is protected
- The Notice of Interest will have the option of lapsing after time or a nominated event. It will have the option of being permissive or absolute and allow for a number of permissions.
- Caveatable interest – common law should determine

## PART 20 — REGISTRATION OF INSTRUMENTS

### *Division 1 — Electronic processing*

### 103 Lodgement by electronic or other means

- Must encompass electronic communication and lodgements.

*Division 2 – Suitability of instruments for registration*

- 104 **When instrument capable of registration**
- 105 **Address for service to be provided**
- 106 **Registration after death of party executing instrument**

*Division 3 – Manner of execution of instruments*

- 107 **How instruments are to be executed and transactions authorised**
- 108 **Execution of instruments by corporations**
- 109 **Execution of instruments by natural persons**
- 110 **Registrar may require proof of execution of instruments**
- 111 **Indicating consent when required for dealing**
- 112 **Execution of instrument under power of attorney**

*Division 4 – The registration process*

- 113 **Lodgement**
- 114 **Updating Register**
- 115 **Registrar’s power to correct obvious errors in instruments lodged for registration**
- 116 **Registrar’s requisitions**
- 117 **Rejecting instrument if requisition not complied with**
- 118 **Withdrawing instrument before registration**
- 119 **Dispensing with production of certificate of title or instrument**
  - Assuming that a Certificate of Title exists for the dealing.
- 120 **Requiring plans and other statutory documents to be lodged**
- 121 **Protection of persons under disability**
  - Registrar may record disability in Register.

*Division 5 – Standard terms in instruments*

- 122 Meaning of “standard terms”**
- 123 Standard terms documents**
- 124 Lodging standard terms documents**
- 125 Withdrawing standard terms documents**
- 126 Other means of incorporating terms into instruments not affected**

*Division 6 – Construction of registered instruments*

- 127 Successors in title implied**
- 128 Construction of dealings relating to land abutting water or road**
  - Construction should take into account (in line with s.18 & s.28):
  - Medium filum; accretion, erosion, etc.

**PART 21 BOUNDARIES— POWERS OF, AND PROCEEDINGS AGAINST, REGISTRAR**

*Division 1 – Powers of Registrar*

- 129 General powers of Registrar**
  - To do whatever is necessary or appropriate to carry out functions under Act.
- 130 Registrar may require instrument for cancellation or correction**
- 131 Registrar may issue substitute instrument of certificate of title**
  - If lost or destroyed, etc; appropriate protections against fraud.
- 132 Registrar may correct errors in Register**
  - Limited, in that correction cannot prejudice the rights of a person already registered.
- 133 Registrar may lodge caveat**
  - To prevent improper dealings, protect persons under disability, etc.
- 134 Registrar may record defeasance of interest**
  - General power; to cover situation where Act contains no specific power to record defeasance of particular interest.
- 135 Registrar may require notice to be given of certain proposed action**
  - Registrar can, eg, require public notice to be given before registering a dealing.

- 136 **Registrar may refer matters to court**
- 137 **Registrar may demand fees and charges**
- 138 **Registrar may approve forms**
- 139 **Registrar may determine disputed boundaries**
- 140 **Registrar may hold inquiry**

*Division 2 – Proceedings against Registrar*

- 141 **Registrar may be compelled to perform duty**
- 142 **No personal liability on Registrar or staff**
  - If acts done in good faith, no personal liability.

**PART 22 — COMPENSATION FOR LOSS**

- 143 **Assurance and Compensation fund**
  - There should be a separately administered assurance / compensation fund for parties who have suffered loss.
  - PLRA policy document / position statement to follow, recommending Funding from lodgement fees should be matched dollar to dollar by State Government
  - There should be no upper limit on payout and there should be compensation for reasonable consequential losses. The principles could follow the general principles which are applied under compulsory acquisition of land. [should be in policy paper]
- 144 **Right to compensation from Fund**

Sets out circumstances when compensation payable.
- 145 **Circumstances where no compensation payable**
  - Eg, for breach of trust, incorrect description of boundaries (unless registration certifies boundaries).
- 146 **Procedure for making claims**
- 147 **Fund's right of subrogation**
  - Where payments made from Fund, Fund has a right of subrogation to claimant's rights against person who caused loss. So claim against Fund is not last resort, but first resort.
- 148 **Time limits for claims**
  - Yes.

**PART 23 — SEARCHES**

**149 Entitlement to search Register**

- An open Register;

**150 Evidentiary effect of documents issued by Registrar**

**PART 24 — MISCELLANEOUS**

**151 Power of Court to direct Registrar**

**152 Registrar to give receipts**

**153 Words and expressions in registered instruments**

- Have same meanings as in Act.

**154 Reference to instrument is reference to instrument completed in the approved form**

- Where Act refers to instrument, it means an instrument completed in the approved form.

**155 References to persons to include assignees etc**

**156 Transfer to self**

- Person may transfer to self.

**157 Interests in succession**

- May create and register interests in succession and in the future..

**158 Service of notices**

**159 Offences against Act**

**160 Registrar's directions**

- Registrars may issue uniform directions specifying procedures to be followed.

**161 Regulation-making power**

**PART 25 — BRINGING LAND UNDER ACT**

**162 Provisions for bringing land under the Act**

- Relevant to jurisdictions where still some old system (common law) land.

**SCHEDULE 1**

- No state-specific and territory-specific provisions. Should investigate a CLERP-style delivery mechanism.

**SCHEDULE 2**

Transitional provisions