

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 registration of title.

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 transaction is not 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).
 - Specify whether power to correct is discretionary or mandatory.
 - The power should not affect leases under 12 months, as outlined in the Leasing Registration matrix

- Challenging decisions of the Registrar-General – Any person dissatisfied with Registrar’s decision:
 - 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

10 Contents of Register

11 The contents and availability of the register

- List the contents of the register (most would be standard: eg, folios, dealings, plans)
- The register should be open to the public.
 - Practitioners often needed to be able to access a lot of different information when conducting due diligence, and it would be useful to have as much of this information as possible stored on or with the Register.
- Historic searches should be allowed.
- Provision for official searches by R-G.
 - 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.

12 Information Registrar must record in Register

- Must be aligned with section 18

13 Information Registrar may record in Register

- Must be aligned with section 18

Division 2 — Folios of the Register

14 Form of folio of Register

- Separate folio for each parcel of land

15 Contents of folio of Register

- Dispense with paper certificates of title, follow the Queensland lead. Alternatives: optional paper certificates of title; staged dispensing with paper certificates of title:
 - Identification needs to be covered in the registration process.
 - The Registrars should decide how the relevant proprietorship information is displayed and is accessible. However, it must be a system that is simple, accessible, convenient and uniform.
 - The Registrars need to decide on the best practise for deciding how to identify registered proprietors and programs with authority to deal.
 - Any electronic system must be better and more cost effective than the paper title system if it is to be replaced.

16 New folios of Register on subdivision or consolidation

17 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.

18 Limited folios of Register

- This would apply only where the Registrar was not prepared to certify boundaries—see below, section 26.
- Boundaries
 - The Act should deal with “middle line” rule and principles governing 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

19 Need for registration

- Usual provision that no title passes unless instrument registered.
- The following interests would be registrable:
 - fees simple;
 - leases;
 - mortgages;
 - easements;
 - profits à prendre;

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- covenants;
 - charges;
 - life interests;
 - remainder and reversion interests;
 - any other interests which statute allows to be registered, eg:
 - water rights;
 - carbon sequestration rights;
 - mining leases;
 - pastoral leases;
 - native title, where determined, etc; and
 - Crown land. The registered 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 required.
 - Writs - Writs which have not yet progressed to court orders should not be recognised unless they relate specifically to an estate or interest in land. There should be a notice procedure similar to a caveat if the writ relates specifically to an estate or interest in land (assuming that a caveat is not already an appropriate remedy). Or on the application of the owner of the writ.
 - Keep trusts off the Register (as per existing system).
 - 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).

20 Priority notices

21 Registrar's duty to register

- As per section 6

22 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 “incorporated memorandums” to reduce clutter in register
- RG be given power to correct “patent errors”
- Once documents 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

23 Order of registration

24 Priority of registered instruments

25 Registered instrument to have effect of deed

26 Instrument of postponement

Division 4 – Consequences of registration

27 Effect of registration

- On registration, the interest is created/passed, and vests.
- Conclusiveness of register
 - Immediate indefeasibility of title 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

- We might want to look at the sort of compensation that should be paid.

28 Conclusiveness of registration

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

29 Conclusiveness of information in Register

30 Consideration not needed

- Purpose is to clarify differences between case law in States on whether registered “volunteers” get indefeasibility.
- “Volunteers” should have same degree of indefeasibility as purchasers for value, as occurs in NSW and WA, as per section 26.

31 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.

32 Exceptions to indefeasibility

- Would be “standard”, though some need discussion. Examples:
 - fraud (on part of registered holder)
 - 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

33 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
 - 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

34 Issuing certificate of title

- Contents of CT.

- 35 **Request not to issue certificate of title**
- 36 **Delivery of certificate of title**
- 37 **Issuing replacement certificate of title**
- 38 **Evidentiary effect of certificate of title**

PART 5 — CO-OWNERS

- 39 **Registering co-owners**
 - Whether hold as joint tenants or tenants in common (in which case, what shares). Presumption in favour of tenants in common.
- 40 **Effect of registration as “joint proprietors”, and “no survivorship”**
 - Only required in those jurisdictions where these phrases are used (or were used historically).
 - Separate folios for the separate interests of tenants in common?
- 41 **Unilateral severance of joint tenancies**
 - To clarify power to sever joint tenancy unilaterally; need to give prior notice after lodgement
 - Provisions regulating right of joint tenant to sever unilaterally. Options are:
 - require notice before severance, leaving it to other joint tenants to seek injunction to restrain proposed severance.
 - 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.

PART 6 — TRANSFERS

- 42 **Registering transfer**
 - To apply to land and “interests in land”, eg lease or mortgage.
- 43 **Requirements for transfer to be registered**
- 44 **Effect of registration of transfer**
 - All rights and obligations also pass.
- 45 **Transfer of mortgaged land**
 - Transferee becomes primarily liable under the mortgage.

46 Transfer of mortgage

47 Transfer under statutory vesting

PART 7 — LEASES

48 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
- Leases should not require a plan – numbers should be sufficient.
- NB: The leasing registration matrix should be used to guide the drafting of this section.

49 Requirements for lease to be registered

- It is not efficient for the Registrar to be required to record short term leases of say 3 years or less, although proponents should be able to register leases of between 12 months and three years voluntarily.

50 Variation of registered lease

- To follow NSW s 55A; one purpose is to overcome argument that variation causes surrender and regrant.

51 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.

52 Registration of options to renew or purchase

53 Expiry of lease

- Registrar may record.

54 Termination of lease following tenant's default

- Registrar may record.

55 Surrender of lease

- Registrar may record.

56 Implied powers of lessors

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

PART 8 — MORTGAGES

57 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;
 - postponement of mortgages
 - mortgagor's right to inspect title deeds
 - mortgagor's and mortgagee's rights to lease [query: if mortgaged property is leased, codify whether variation of lease binds mortgagee and any purchaser from the mortgagee?]
- Unless a lease is registered, you shouldn't have to deal with a variation unless it is registered. 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.

58 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.

59 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.

60 Postponement of mortgages

- May not be required: covered by earlier provision re instrument of postponement.

61 Mortgagee's powers

62 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.

63 Power of sale

- Manner of exercise; effect of transfer following sale.

64 Liability of mortgagee in possession

65 Discharge of mortgage

66 Foreclosure

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

PART 9 — STATUTORY CHARGES

67 Registration of statutory charges

- Purpose: to allow public authorities with benefit of statutory charge, to register the charge.

PART 10 — EASEMENTS

Division 1 — Creation of easements

68 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.

69 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.

70 Creation by plan of subdivision

- For those jurisdictions where this is not already covered.

71 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.
- If there's a right in the nature of a residence, it should be registerable.

72 Creation by court order

- Power of Registrar to register Court-created easements.
- Registration of easements should be allowable despite common ownership of burdened and benefited land.

Division 2 – Common ownership

73 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

74 Variation or release by parties

75 Cancellation by Registrar

- On grounds such as expiration by time, or abandonment.
- Provision for removing easements that have been abandoned.
 - RG to have the power to remove easements on proof of non-use for 20 years, along lines of NSW and Vic provisions).
 - Provision needs to be included in legislation for removal of easements that have been abandoned (if not already in the legislation).

76 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.

Division 4 – Meaning of certain types of easements

77 **Party wall**

78 **Right of carriageway**

79 **Others?**

Division 5 – Contributions to repairs

80 **Contributions to repairs**

- To clarify law about “running” of obligations to contribute to repairs.

PART 11 — COVENANTS

Division 1 – Creation of covenants

81 **Positive covenants permitted**

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

82 **Methods of creating covenants under this Part**

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

83 **Creation by registered instrument of covenant**

- Covenants to be registered, not merely recorded (as in some States).
- Restrictive covenants should be able to be registered on title, despite common ownership of burdened and benefited land.
- There needs to be provision for removing covenants that have been abandoned (Give RG the power to remove on proof of non-enforcement of breach for 20 years).

84 **Creation by plan of subdivision**

- For those jurisdictions where this is not already covered.

Division 2 – Common ownership

85 **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

86 Variation or release by parties

87 Cancellation by Registrar

- On grounds such as waiver.

88 Court order varying or extinguishing covenant

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

Division 4 — Duration of covenant

89 Duration of covenant

PART 12 — PROFITS A PRENDRE

Division 1 — Creation of profits à prendre

90 Creation by registered instrument

Division 2 — Common ownership

91 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

92 Variation or release by parties

93 Cancellation by Registrar

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

PART 13 — TRUSTS

94 No notice of trusts in Register

- Keep trusts off the Register (as per existing system).

95 Vesting orders in relation to trusts

- No effect until registered; Registrar may register.

96 Dealing with trustee

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

PART 14 — DECEASED ESTATES

- 97 Registration of personal representative**
- 98 Dealings without registration of personal representative**
- Registrar to have discretion to register dealings without registration of personal representative (eg, in small estates).
- 99 Notice of death**

PART 15 — BANKRUPTCY

- 100 Transmission on bankruptcy**

PART 16 — WRITS

- 101 Facility to request to register writ**
- 102 Effect of registration of writ**
- Note: will clarify Black v Garnock issues.
- 103 Cancellation of registration of writ**
- 104 Discharge or satisfaction of writ**
- 105 Transfer of land sold in execution**

PART 17 — ADVERSE POSSESSION

- 106 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 18 — CAVEATS

Division 1 — Lodging caveats

107 Who may lodge caveat?

- System must deal with successive caveats

108 Requirements of caveat

109 Recording a caveat

110 Registrar to give notice of caveat

Division 2 — Effect of caveat

111 Effect of lodging caveat

Division 3 — Withdrawal, lapsing and removal of caveats

112 Withdrawal of caveat

113 Lapsing of caveat following notice by caveatee

114 Removal of caveat by court order

115 Undertakings and orders for security

- To confirm that court can require undertakings and require security in removal proceedings.

116 Cancellation of caveat by Registrar

- If satisfied caveator's interest has ceased, etc.

117 Further caveats

Division 4 – Improper caveats

118 Compensation for improper caveat

Division 5 – General

119 Notices to caveator

120 Right to injunction not affected

PART 19 — REGISTRATION OF INSTRUMENTS

Division 1 – Electronic processing

121 Lodgement by electronic or other means

- To allow sufficient width to encompass electronic lodgements and, eventually, electronic conveyancing.

Division 2 – Suitability of instruments for registration

122 When instrument capable of registration

123 Registrar’s discretion to reject instruments on certain grounds

- Purpose is to help Registrar check the bona fides and legal competence of parties to dealings.

124 Address for service to be provided

125 Registration after death of party executing instrument

Division 3 – Manner of execution of instruments

126 How instruments are to be executed

127 Execution of instruments by corporations

128 Execution of instruments by natural persons

129 Registrar may require proof of execution of instruments

130 Indicating consent when required for dealing

131 Execution of instrument under power of attorney

Division 4 – The registration process

132 Lodging certificate of title

- Assuming, of course, that CTs are to be part of the system.

133 Updating certificate of title on registration

- Assuming that CTs are part of the system.

134 Registrar's power to correct obvious errors in instruments lodged for registration

135 Registrar's requisitions

136 Rejecting instrument if requisition not complied with

137 Withdrawing instrument before registration

138 Dispensing with production of certificate of title or instrument

- Assuming that CTs are part of the system.

139 Requiring plans etc to be lodged

140 Protection of persons under disability

- Registrar may record disability in Register; must not thereafter register dealing by that person without checking that no fraud, etc.

Division 5 – Standard terms in instruments

141 Meaning of “standard terms”

142 Standard terms documents

143 Lodging standard terms documents

144 Withdrawing standard terms documents

145 Other means of incorporating terms into instruments not affected

Division 6 – Construction of registered instruments

146 Successors in title implied

147 Construction of dealings relating to land abutting water or road

- Medium filum; accretion, erosion, etc.
- Boundaries
 - (a) Should deal with “middle line” rule and principles governing accretion and erosion.
 - (b) 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).

PART 20 — POWERS OF, AND PROCEEDINGS AGAINST, REGISTRAR

Division 1 — Powers of Registrar

148 General powers of Registrar

- To do whatever is necessary or appropriate to carry out functions under Act.

149 Registrar may require instrument for cancellation or correction

150 Registrar may issue substitute instrument of certificate of title

- If lost or destroyed, etc; appropriate protections against fraud.

151 Registrar may correct errors in Register

- Limited, in that correction cannot prejudice the rights of a person already registered.

152 Registrar may lodge caveat

- To prevent improper dealings, protect persons under disability, etc.

153 Registrar may record defeasance of interest

- General power; to cover situation where Act contains no specific power to record defeasance of particular interest.

154 Registrar may require notice to be given of certain proposed action

- Registrar can, eg, require public notice to be given before registering a dealing.

155 Registrar may refer matters to court

156 Registrar may demand fees and charges

157 Registrar may approve forms

158 Registrar may determine disputed boundaries

Division 2 — Power to hold inquiry

159 Registrar may hold inquiry

- This power is not needed. Registrar has power to state a case to the court.

Division 3 — Proceedings against Registrar

160 Registrar may be compelled to perform duty

161 No personal liability on Registrar or staff

- If acts done in good faith, no personal liability.

PART 21 — COMPENSATION FOR LOSS

162 Assurance fund

- There should be an assurance fund.
- 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.

163 Compensation Fund

- How the Fund is established: from proportion of lodgement fees.
- Deficiencies to be made up from consolidated revenue.

164 Right to compensation from Fund

Sets out circumstances when compensation payable.

165 Circumstances where no compensation payable

- Eg, for breach of trust, incorrect description of boundaries (unless registration certifies boundaries), where solicitor or licensed conveyancer acting (relegated to professional fidelity fund).

166 Procedure for making claims

167 Government's right of subrogation

- Where payments made from Fund, Government is subrogated to claimant's rights against person who caused loss. So claim against Fund is not last resort, but first resort.

168 Time limits for claims

- Yes.

PART 22 — SEARCHES

169 Entitlement to search Register

- An open Register; right to search during business hours.
- As per part 10 of the model.

170 Evidentiary effect of documents issued by Registrar

PART 23 — MISCELLANEOUS

171 Power of Court to direct Registrar

172 Registrar to give receipts for documents

173 Words and expressions in registered instruments

- Have same meanings as in Act.

174 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.

175 References to persons to include assigns etc

176 Transfer to self

- Person may transfer to self. Query if needed: may be covered in general property law legislation in all jurisdictions, only where the person is transferring in different capacities.

177 Interests in succession

- May create and register interests in succession without any form of use.

178 Service of notices

179 Offences against Act

180 Registrar's directions

- Registrar may issue directions specifying procedures to be followed.

181 Regulation-making power

PART 24 — BRINGING LAND UNDER ACT

182 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