

# AUSTRALIAN CAPITAL TERRITORY.

No. 14 of 1957.

## AN ORDINANCE

To amend and consolidate the law relating to Trustees and Trust Property, and for other purposes.

I THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910-1955*.

Dated this eighth day of November, 1957.

W. J. SLIM  
Governor-General.

By His Excellency's Command,

NEIL O'SULLIVAN  
Attorney-General for and on behalf of the Minister  
of State for the Interior.

### TRUSTEE ORDINANCE 1957.

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Trustee Ordinance* Short title. 1957.\*
2. This Ordinance shall come into operation on the first day Commencement. of December, One thousand nine hundred and fifty-seven.
3. This Ordinance is divided into Parts, as follows:— Parts.
  - Part I.—Preliminary (Sections 1-7).
  - Part II.—Application of the Trustee Act, 1925-1942, of the State of New South Wales (Sections 8-10).

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\* Notified in the *Commonwealth Gazette* on 21st November, 1957.  
6571/55.—PRICE 1s.

### Part III.—Powers of Trustees.

Division 1.—Application of certain Provisions contained in the Conveyancing Acts, 1919-1954, of the State of New South Wales (Sections 11-12).

Division 2.—Powers of Trustees in relation to the Resumption of Property (Section 13).

### Part IV.—Miscellaneous (Section 14).

Repeal of Ordinances.

4. The Ordinances specified in the First Schedule to this Ordinance are repealed.

New South Wales Acts to cease to apply.

5. The Trustee Act, 1898, and the Trustee Act Amendment Act, 1902, of the State shall cease to apply to the Territory as laws of the Territory.

Savings.

6.—(1.) The repeal effected by section four of this Ordinance and the alteration in the law of the Territory effected by the last preceding section does not, unless otherwise expressly provided by this Ordinance or by the provisions of the Act of the State adopted by section eight of this Ordinance, affect—

- (a) a right accrued or obligation incurred before the commencement of this Ordinance under the law then in force;
- (b) the validity, invalidity, operation, effect or consequence of an instrument executed or made, or of anything done or suffered, before the commencement of this Ordinance; or
- (c) an action, proceeding or thing pending or not completed immediately before the commencement of this Ordinance.

(2.) An action proceeding or thing referred to in paragraph (c) of the last preceding sub-section may be carried on and completed as if this Ordinance had not been made and, for that purpose, the Ordinances repealed by this Ordinance and the Acts of the State specified in the last preceding section shall be deemed to continue in force in the Territory.

(3.) The generality of this section is not affected by a saving in a section of the Trustee Act, 1925-1942, in its application in the Territory.

7. In this Ordinance, unless the contrary intention appears— **Definitions**

- “the Conveyancing Acts, 1919-1954” means the Conveyancing Act, 1919, of the State, as amended in the State before the commencement of this Ordinance;
- “the Crown Solicitor” means the Crown Solicitor for the State;
- “the court” means the Supreme Court of the Australian Capital Territory;
- “the Curator” means the Curator of Estates of Deceased Persons appointed under the *Administration and Probate Ordinance* 1929-1953, and includes an Acting Curator of Estates of Deceased Persons and a Deputy Curator of Estates of Deceased Persons so appointed;
- “the Registrar” means the Registrar of Titles appointed under the *Real Property Ordinance* 1925-1957, and includes an Acting Registrar of Titles and a Deputy Registrar of Titles so appointed;
- “the Registrar-General” means the Registrar-General for the State;
- “the State” means the State of New South Wales;
- “the Trustee Act, 1925-1942” means the Trustee Act, 1925, of the State, as amended by the Trustee (Amendment) Act, 1929, the Statute Law Revision Act, 1937, the Conveyancing, Trustee and Probate (Amendment) Act, 1938, the Trustee and Wills (Emergency Provisions) Act, 1940, and the Public Trustee (Amendment) Act, 1942, of the State;
- “trustee company” means a trustee company for the purposes of the *Trustee Companies Ordinance* 1947-1954.

**PART II.—APPLICATION OF THE TRUSTEE ACT, 1925-1942, OF THE STATE OF NEW SOUTH WALES.**

8. The provisions of the Trustee Act, 1925-1942, apply, by force of this Ordinance, in the Territory as a law of the Territory, subject to the next succeeding section and to the modifications prescribed by the Second Schedule to this Ordinance. Application and modification of the Trustee Act, 1925-1942.

9. In the application in the Territory of the Trustee Act, 1925-1942, as modified by the Second Schedule to this Ordinance— Interpretation of the Trustee Act, 1925-1942.

- (a) a reference in that Act to the Court or the Supreme Court shall be read as a reference to the Supreme Court of the Territory;

- (b) a reference in that Act to the Judge shall be read as a reference to the Judge of the Supreme Court;
- (c) a reference in that Act to the Master in Lunacy shall be read as a reference to the Master in Lunacy of the State;
- (d) a reference in that Act to the public trustee shall be read as a reference to the Curator;
- (e) a reference in that Act to the Registrar-General shall be read as a reference to the Registrar-General for the State;
- (f) a reference in that Act to New South Wales shall be read as a reference to the Territory (including the Jervis Bay Territory);
- (g) the expression "this Act" in that Act shall be read as referring to the Trustee Act, 1925-1942, in its application in the Territory;
- (h) a reference in that Act to a particular Act of the State shall be read as a reference to that particular Act in its application in the Territory; and
- (i) a reference in that Act to the commencement of that Act shall be read as a reference to the commencement of this Ordinance.

Protection of  
Registrar-  
General, &c.

10.—(1.) Where the Trustee Act, 1925-1942, in its application in the Territory, provides that the protection afforded by a section of that Act extends to the Registrar, the protection afforded by that section shall, by force of this subsection, be deemed to extend to the Registrar-General, the Crown Solicitor and other persons registering or certifying title.

(2.) Where the Trustee Act, 1925-1942, in its application in the Territory, provides that the Registrar shall not be concerned to inquire into a matter specified in a section of that Act, the Registrar-General, the Crown Solicitor and other persons registering or certifying title shall, by force of this subsection, be deemed not to be concerned to inquire into that matter.

### PART III.—POWERS OF TRUSTEES.

*Division 1.—Application of certain Provisions contained in the Conveyancing Acts, 1919-1954, of the State of New South Wales.*

Application and  
modification of  
the  
Conveyancing  
Acts, 1919-1954.

11.—(1.) The provisions of Division 5 of Part IV., and of Part XIVA. (except section one hundred and fifty-one B), of the Conveyancing Acts, 1919-1954, apply, by force of this

Ordinance, in the Territory as a law of the Territory, subject to the next succeeding section and to the modifications prescribed by the Third Schedule to this Ordinance.

(2.) The provisions of section seven of the Conveyancing Acts, 1919-1954, in so far as they relate to any of the provisions applied in the Territory by the last preceding sub-section, apply, by force of this Ordinance, in the Territory as a law of the Territory, subject to the next succeeding section and to the modifications prescribed by the Third Schedule to this Ordinance.

**12.** In the application in the Territory of the provisions of the Conveyancing Acts, 1919-1954, applied in the Territory by the last preceding section, as modified by the Third Schedule to this Ordinance—

Interpretation  
of certain  
provisions of  
the  
Conveyancing  
Acts,  
1919-1954.

- (a) a reference in those provisions to the court shall be read as a reference to the Supreme Court of the Territory;
- (b) a reference in those provisions to the Master in Lunacy shall be read as a reference to the Master in Lunacy of the State;
- (c) a reference in those provisions to the public trustee shall be read as a reference to the Curator;
- (d) the expression "this Act" in those provisions shall be read as referring to the provisions of the Conveyancing Acts, 1919-1954, applied in the Territory by the last preceding section, as modified by the Third Schedule to this Ordinance;
- (e) the expressions "Act" or "Act of Parliament" in those provisions shall be read as referring to an Act (including an Act of the State) or Ordinance in force in the Territory;
- (f) a reference in those provisions to a particular Act of the State shall be read as a reference to that particular Act in its application in the Territory;
- (g) a reference in those provisions to the Trustee Act, 1925, or the Trustee Act, 1925-1938, shall be read as a reference to the Trustee Act, 1925-1942, in its application in the Territory; and
- (h) a reference in those provisions to the commencement of the Conveyancing (Amendment) Act, 1930, of the State, shall be read as a reference to the commencement of this Ordinance.

*Division 2.—Powers of Trustees in relation to the Resumption of Property.*

**13.—(1.)** In this section—

"compensation money" means the money payable by a resuming authority in respect of, or as a result of, the resumption of land;

Powers of  
trustees where  
land is  
resumed.

“land” includes a legal or equitable estate or interest in land and a right, power or privilege over, or in connexion with, land;

“personal representative” means the executor or administrator, for the time being, of a deceased person;

“resumed” has a meaning corresponding to the meaning of resumption;

“resumption” means the compulsory acquisition of land under the provisions of the *Lands Acquisition Act* 1955-1957, or under the provisions of any other Act of the Commonwealth or a State, or of any Ordinance of a Territory of the Commonwealth, authorizing the compulsory acquisition of land; and

“the Master in Lunacy” means the Master in Lunacy of the State.

(2.) Where land that is vested in a trustee or personal representative is acquired by resumption, the trustee or personal representative or his successor in office may sell and convey the land to the resuming authority and may agree upon and receive the compensation money payable in respect of the land resumed.

(3.) This section does not authorize a sole trustee, not being a trustee company, the Curator, a trustee incorporated by an Act of the Commonwealth, an Act of a State or an Ordinance of a Territory of the Commonwealth, or a person appointed sole trustee by the instrument creating the trust to which the land is subject, to agree upon or receive compensation money but when an additional trustee, being a person approved by the Solicitor-General, has been appointed, the trustees may agree upon and receive the compensation money.

(4.) The last preceding sub-section does not affect the right of a personal representative, as such, to agree upon, give a valid receipt for, and direct the application of, compensation money.

(5.) A trustee or personal representative shall hold the compensation money—

(a) where the instrument, if any, creating the trust to which the land was subject makes provision for the application of any compensation money received in respect of the resumption of that land—upon the trusts so provided; or

(b) in any other case—upon the trusts subject to which that land was held.

(6.) Subject to the terms of the instrument creating a trust and to the provisions of this section, a trustee or a personal representative—

- (a) may invest compensation money held by him on any investment authorized by law for the investment of trust moneys; and
- (b) may, with the consent of a person, not being an infant or a person subject to disability, who would be entitled to the income from the land in relation to which the compensation money was paid if that land had not been resumed, apply the compensation money—
  - (i) if it was received in respect of a building that was taken under the authority of the *Lands Acquisition Act 1955-1957*, or another Act of the Commonwealth or a State, or an Ordinance of a Territory of the Commonwealth, authorizing the compulsory acquisition of land—in providing another building in its stead;
  - (ii) if it was received in respect of a building that was injured by the proximity of a work authorized by or under an Act of the Commonwealth or a State or an Ordinance of a Territory of the Commonwealth—in removing or replacing the building or in providing another building in its stead; or
  - (iii) in any other case—in purchasing other land to be conveyed to the trustee or personal representative upon the trusts upon which was held the land in relation to which the compensation money was received.

(7.) Where an insane person, an incapable person or an insane patient would be entitled to the income from land resumed if that land had not been resumed, a trustee or personal representative may, with the consent of—

- (a) the committee or manager of the estate of the insane person or incapable person or, if there is no committee or manager, the Master in Lunacy or the court; or
- (b) the Master in Lunacy or the court on behalf of an insane patient,

apply the compensation money in a manner authorized by the last preceding sub-section.

## (8.) Where—

- (a) an infant;
- (b) a person who cannot be found or ascertained; or
- (c) a person who may, or may not, be alive,

would be entitled to the income from land resumed if that land had not been resumed, a trustee or personal representative may, without the consent of any person, apply compensation money received in respect of that land in a manner authorized by sub-section (6.) of this section.

(9.) The powers conferred by this section on a trustee or personal representative are in addition to and not in substitution for or in derogation of any other power that the trustee or personal representative may have to sell and convey land that is resumed or to agree upon and receive compensation money.

(10.) This section applies only to resumptions made after the commencement of this Ordinance.

## PART IV.—MISCELLANEOUS.

Application of rule in *Howe v. Earl of Dartmouth* to leases.

14. Unless otherwise provided in an instrument creating a trust, the rule in *Howe v. Earl of Dartmouth* (7 Ves. 137) does not apply to or in relation to trust property consisting of a lease of land in the Territory granted under the *Leases Ordinance* 1918-1955, or the *City Area Leases Ordinance* 1936-1951.

## THE SCHEDULES.

## FIRST SCHEDULE.

Section 4.

## ORDINANCES REPEALED.

*Trustee Ordinance* 1932.  
*Trustee Ordinance* 1934.  
*Trustee Ordinance* 1936.  
*Trustee Ordinance* 1943.  
*Trustee Ordinance* 1944.  
*Trustee Ordinance* 1945.

## SECOND SCHEDULE.

Section 8.

## MODIFICATIONS OF THE TRUSTEE ACT, 1925-1942, IN ITS APPLICATION IN THE TERRITORY.

Item no.	Provisions modified.	Modifications.
1	Section 1 ..	Omit sub-section (2).
2	Section 3 ..	Omit.
3	Section 4 ..	Omit.
4	Section 5 ..	(a) Before the definition of "Administrator", insert the following definition :— "Act of Parliament" means Act of the Parliament of the Commonwealth, or Act of the Parliament of the State, in force in the Territory, and includes an Ordinance of the Territory."



SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
4	Section 5— <i>continued.</i>	<p>(b) Omit the definition of “ Administrator ”, insert—  “ Administrator ’ means an administrator within the meaning of the <i>Administration and Probate Ordinance</i> 1929–1953, and includes the Curator acting as collector of an estate under Part VI. of that Ordinance.”</p> <p>(c) Omit the definition of “ Court ”.</p> <p>(d) Omit from the definition of “ Insane person ” the words “ under any Lunacy Act in force at the time ”, insert the words “ under any law relating to lunacy in force in the Territory ”.</p> <p>(e) Omit the definition of “ Judge ”.</p> <p>(f) After the definition of “ Stock ”, insert the following definitions :—  “ the Commonwealth ’ means the Commonwealth of Australia.  “ the Crown Lands Acts ’ mean, in relation to any land, such of the Acts of the State relating to Crown Land as are in force in the Territory and applicable to that land.  “ the Curator ’ means the Curator of Estates of Deceased Persons appointed under the <i>Administration and Probate Ordinance</i> 1929–1953, and includes an Acting Curator of Estates of Deceased Persons and a Deputy Curator of Estates of Deceased Persons so appointed.  “ the Registrar ’ means the Registrar of Titles appointed under the <i>Real Property Ordinance</i> 1925–1957, and includes an Acting Registrar of Titles and a Deputy Registrar of Titles so appointed.  “ the Registrar of the Court ’ means the Registrar of the Supreme Court of the Australian Capital Territory.  “ the State ’ means the State of New South Wales.  “ the Territory ’ means the Territory accepted by the Commonwealth in pursuance of the <i>Seat of Government Acceptance Act</i> 1909, and described in the Second Schedule to that Act, and includes the Territory accepted by the Commonwealth in pursuance of the <i>Jervis Bay Territory Acceptance Act</i> 1915, and described in the agreement contained in the Schedule to that Act.”</p>
5	Section 6 ..	Omit from sub-section (2) “ Trustee and Wills (Emergency Provisions) Act, 1940 ”, insert “ <i>Trustee (Emergency Provisions) Ordinance</i> 1944 ”.
6	Section 9 ..	<p>Omit sub-sections (3), (3A), (4) and (5), insert the following sub-sections :—  “ (3) Land which is subject to the provisions of the <i>Real Property Ordinance</i> 1925–1957, the <i>Real Property Act</i>, 1900, the <i>Crown Lands Acts</i> or the <i>Mining Ordinance</i> 1930–1937, does not, under this section, vest until—  (a) the appropriate transfer is registered so that the land is duly transferred ; or  (b) an entry of the vesting of the land is made in the proper register kept under the provisions of the Act, Acts or Ordinance to which the land is subject.</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
6	Section 9— <i>continued.</i>	<p>“(3A) For the purposes of the last preceding sub-section, an entry of the vesting of land has the same effect as the registration of a transfer of the land.</p> <p>“(4) Property—</p> <p>(a) which is comprised in a mortgage for securing money subject to the trust, not being—</p> <p>(i) land subject to the provisions of the <i>Real Property Ordinance 1925–1957</i>, or the <i>Real Property Act, 1900</i> ; or</p> <p>(ii) land conveyed on trust for securing debentures or debenture stock ; or</p> <p>(b) in respect of which an Act or Ordinance in force in the place where the property is situate, not being an Act or Ordinance referred to in sub-section (3) of this section, requires a conveyance to be registered,</p> <p>does not, under this section, vest until the appropriate transfer is registered so that the property is duly transferred.</p> <p>“(5) Property that is only transferable—</p> <p>(a) in books kept by a corporation, company or other body ; or</p> <p>(b) in the manner directed by or under a law in force in the place where the property is situate, does not, under this section, vest until it is duly transferred.”</p>
7	Section 10 ..	<p>Omit sub-sections (2), (2A), (2B) and (3), insert the following sub-sections:—</p> <p>“(2) Where—</p> <p>(a) such a person renounces probate or fails, after being duly cited, to apply for probate ;</p> <p>(b) such a person dies before probate is granted to him ; or</p> <p>(c) such a person, instead of applying for probate—</p> <p>(i) requests the Curator in writing to apply for an order under section eighty-eight of the <i>Administration and Probate Ordinance 1929–1953</i> ; or</p> <p>(ii) authorizes a trustee company to apply for administration with the will annexed,</p> <p>and where the Court grants to the Curator an order under that section to collect and administer the estate of the person or administration with the will of the person annexed is granted to a trustee company, the Curator or the trustee company, as the case may be, shall, by virtue of the order or grant and without further appointment be deemed to be appointed trustee of the will in the place of the person appointed trustee by the will.</p> <p>“(3) Where—</p> <p>(a) under section seven of the <i>Trustee Companies Ordinance 1947–1954</i>, a trustee company is authorized to apply for probate of a will in place of a person who was, by the will, appointed both executor and trustee of the will ; and</p> <p>(b) probate of that will is granted to the trustee company,</p> <p>the trustee company shall, by virtue of the grant and without further appointment, be deemed to be appointed trustee of the will in place of that person.</p>

## SECOND SCHEDULE—continued.

Item no.	Provisions modified.	Modifications.
7	Section 10— <i>continued.</i>	<p>“ (4) Where—</p> <p>(a) the Court grants administration with the will annexed to a trustee company instead of granting probate of the will to a person who was, by the will, appointed both executor and trustee of the will ; or</p> <p>(b) under section fourteen of the <i>Trustee Companies Ordinance 1947-1954</i>, an executor who was, by a will, appointed both executor and trustee of the will, with the consent of the Court, appoints a trustee company to perform and discharge the acts and duties of that executor,</p> <p>the trustee company shall, by virtue of the appointment, be deemed to be appointed trustee or one of the trustees, as the case may be, of the will.</p> <p>“ (5) This section applies only to such a renunciation, failure, grant or appointment after the commencement of this Act.”</p>
8	Section 11 ..	<p>(a) Omit “ the Real Property Act, 1900—”, in sub-section (3), insert “ the Real Property Act, 1900, or the <i>Real Property Ordinance 1925-1957</i>—”.</p> <p>(b) After “ Registrar-General”, wherever occurring in sub-section (3), insert “ or the Registrar, as the case may be.”</p>
9	Section 12 ..	<p>(a) Omit from sub-section (1) all the words after “ as the case may be”, insert “, shall be deemed not to be registered for the purposes of this Act unless it has been registered under the <i>Registration of Deeds Ordinance 1957</i>.”</p> <p>(b) After “ provisions of”, in sub-section (3), insert “ the <i>Real Property Ordinance 1925-1957</i> or ”.</p> <p>(c) Omit from sub-section (4) “ Real Property Act, 1900”, insert “ <i>Real Property Ordinance 1925-1957</i>”.</p> <p>(d) Omit from sub-section (4) “ Registrar-General” (wherever occurring), insert “ Registrar ”.</p> <p>(e) After sub-section (4), insert the following sub-section :—</p> <p>“ (4A) Where an instrument specified in sub-section (1) of this section affects land subject to the provisions of the Real Property Act, 1900 or the Crown Lands Acts or affects lands the title to which is registered under the provisions of the Registration of Deeds Act, 1897, the instrument shall be deemed not to have any force and effect in relation to that land—</p> <p>(a) until the instrument is registered in the office of the Registrar-General in the manner provided by the law of the State for the registration of instruments of a similar nature ; and</p> <p>(b) where the land affected is subject to the provisions of the Real Property Act, 1900, until the Registrar-General has, in the manner prescribed by or for the purposes of that Act, made an entry of the vesting of the land or has entered, varied or withdrawn such caveats as he deems proper in the circumstances.”</p>
10	Section 13 ..	<p>(a) After “ two years” in sub-section (1), insert “ and a proper delegation, by the trustee, of the execution of the trust under the <i>Trustee (Emergency Provisions) Ordinance 1944</i> is not in force ”.</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
10	Section 13— <i>continued.</i>	(b) Omit sub-section (3), insert— “ (3) The protection afforded by this section to a purchaser in good faith extends to the Registrar when registering or certifying title.”.
11	Section 14 ..	<p>(a) Omit sub-section (2), insert— “ (2) The securities authorized by this Act are— (a) government securities of the Commonwealth, of the United Kingdom, of a State of the Commonwealth or of any other part of the Queen’s dominions ; (b) debentures or securities guaranteed by the Government of the Commonwealth or of a State of the Commonwealth ; (c) securities issued by a city, county, municipal or shire council in the Commonwealth ; (d) fixed deposits in a bank carrying on business in the Commonwealth ; (e) deposits in a savings bank carrying on business in the Commonwealth ; and (f) mortgages of— (i) the fee simple of land in the Commonwealth ; or (ii) land held under the provisions of the <i>Leases Ordinance 1918–1955</i>, the <i>City Area Leases Ordinance 1936–1951</i>, the <i>Church Lands Leases Ordinance 1924–1932</i> or the <i>Leases (Special Purposes) Ordinance 1925–1943</i>.”.</p> <p>(b) Omit from sub-section (3) “ paragraphs (a) (b) (c) and (d)”, insert “ paragraph (a), (b) or (c) ”.</p> <p>(c) Omit from sub-section (4) “ or of this State.”, insert “ or of a State of the Commonwealth. ”.</p> <p>(d) Omit sub-section (8), insert— “ (8) This section does not empower a trustee to invest trust funds on the security of a mortgage of land except on the security of a first legal mortgage of land.”.</p> <p>(e) Omit from sub-section (12) “ any Act ”, insert “ any law in force in the Territory ”.</p>
12	Section 15 ..	Omit from sub-section (1) “ pay any trust money to the Colonial Treasurer or to any bank or corporation prescribed by rules of court to a deposit or other account ”, insert “ deposit trust money with a bank or savings bank carrying on business in the Commonwealth ”.
13	Section 16 ..	Omit from sub-section (5) “, or on any reference to the Master in Equity, the Master ”.
14	Section 18 ..	<p>Omit sub-sections (2), (3) and (4), insert the following sub-section :— “ (2) A loan shall be deemed not to have been made by a trustee in accordance with this section— (a) unless the trustee acts upon a report of the value of the property made by a person reasonably believed by the trustee to be a competent valuer and instructed and employed by the trustee independently of any owner of the property, whether the valuer carries on business in the locality where the property is situated or elsewhere ;</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
14	Section 18— <i>continued.</i>	<p>(b) unless the loan is made upon the advice, expressed in the report, of the valuer ;</p> <p>(c) where the loan is made on the security of land comprised in a lease granted under the <i>Leases Ordinance</i> 1918–1955—unless the amount of the loan does not exceed two equal third parts of the value, as stated in the report, (less any moneys due and payable by the lessee to the Commonwealth in accordance with the lease) of the interest of the lessee in the fixtures, erections and improvements which are on the land comprised in the lease and of which the Commonwealth has covenanted to pay the value to the lessee ; and</p> <p>(d) except as provided in the last preceding paragraph—unless the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report.”</p>
15	Section 20 ..	Omit from sub-section (2) “ the Registrar-General Crown Solicitor or other person registering or certifying title ”, insert “ the Registrar ”.
16	Section 24 ..	Omit from sub-section (3) “ paragraphs (a) (b) (c) and (d) ”, insert “ paragraph (a), (b) or (c) ”.
17	Section 26 ..	<p>Omit paragraph (d) of sub-section (1), insert the following paragraphs :—</p> <p>“ (d) impose, reserve or make binding, as far as the law permits, by covenant, condition or other means, on the whole or any part of the trust property that remains unsold, or on any property sold and on the purchaser of that property, a restriction or reservation—</p> <ul style="list-style-type: none"> <li>(i) with respect to building on, or other user of, land ;</li> <li>(ii) with respect to mines, minerals or any other thing ; or</li> <li>(iii) for the purpose of the more beneficial working of mines and minerals ;</li> </ul> <p>“ (da) sell the whole or part of the trust property, or sell mines and minerals apart from the surface of land, and in any such case the sale may be either with or without—</p> <ul style="list-style-type: none"> <li>(i) a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the whole or any part of the trust property that remains unsold or to any property sold ;</li> <li>(ii) an exception or reservation of all or any of the mines and minerals in or under the trust property ;</li> <li>(iii) a grant or reservation of powers of working, way-leaves, rights of way, rights of water and drainage and other powers, easements rights, and privileges for or connected</li> </ul>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
17	Section 26— <i>continued.</i>	<p>with mining purposes in relation to the whole or part of the trust property that remains unsold or to any property sold ; and</p> <p>(iv) a covenant by the purchaser of land to expend money on the land ;</p> <p>“(db) layout and make such roads, streets and ways, to be dedicated to the public or not, and grant such easements, rights of way or rights of drainage over those roads, streets and ways, as the circumstances of the case require and the trustee thinks fit ;”.</p>
18	Section 27B..	Omit from sub-section (4) “ the Trustee (Amendment) Act, 1929,” insert “ this Act ”.
19	Section 28 ..	<p>(a) Omit from paragraph (d) of sub-section (4) “ notwithstanding section one hundred and six of the Conveyancing Act, 1919,”.</p> <p>(b) Omit from sub-section (11) “, or on any reference to the Master in Equity, the Master ”.</p>
20	Section 29 ..	Omit.
21	Section 32A..	Omit “ land in New South Wales ”, insert “ land in the Commonwealth ”.
22	Section 33 ..	<p>Omit sub-section (6), insert—</p> <p>“(6) This section extends to securities by way of mortgage of land under the <i>Real Property Ordinance</i> 1925–1957, or under the <i>Real Property Act</i>, 1900, and, in relation to such a security, an order for foreclosure includes an order for foreclosure under that Ordinance or that Act, as the case may be.”.</p>
23	Section 34 ..	Omit from sub-section (3) “ the Registrar-General Crown Solicitor or other person registering or certifying title ”, insert “ the Registrar ”.
24	Section 35 ..	Omit from sub-section (3) “ the Registrar-General Crown Solicitor or other person registering or certifying title ”, insert “ the Registrar ”.
25	Section 36 ..	<p>Omit sub-section (5), insert the following sub-sections—</p> <p>“(5) A trustee making a lease under this section may execute such assurances and do such things as are necessary or proper to make the lease.</p> <p>“(5A) A lease shall be deemed not to have been made under this section unless—</p> <p>(a) it is made to take effect in possession not later than three months after its date ;</p> <p>(b) it reserves the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but, subject to the next succeeding sub-section, without a fine being taken or the rent being made payable in advance except that the last payment of rent may be made payable on a day not more than one month before the expiration of the term of the lease ;</p> <p>(c) it contains a condition of re-entry if the rent is not paid within a period specified in the lease, being a period not exceeding thirty days ;</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
25	Section 36— <i>continued.</i>	<p>(d) in the case of a lease of land subject to the provisions of the <i>Real Property Ordinance 1925–1957</i> that would not, unless registered under that Ordinance, be valid as against a person claiming an interest in the land by virtue of a dealing registered subsequent to the execution of the lease—it is registered under that Ordinance;</p> <p>(e) in the case of a lease other than a lease referred to in the last preceding paragraph—it is registered under the <i>Registration of Deeds Ordinance 1957</i>; and</p> <p>(f) a duplicate or counterpart of the lease is executed by the lessee and delivered to the lessor.</p> <p>“(5B) Where a trustee makes a lease of land on which are erected premises that are licenced under the <i>Liquor Ordinance 1929–1956</i>—</p> <p>(a) a bonus or fine may be taken in respect of the lease ; and</p> <p>(b) if a bonus or fine is taken, the bonus or fine shall be dealt with by the trustee as though an amount ascertained by dividing the amount of the bonus or fine by the number of days contained in the term of the lease were rent received by the trustee under the lease in respect of each day of the term of the lease.</p> <p>“(5C) The execution of a lease by the lessor is, in favour of the lessee and all persons deriving title under the lessee, evidence of the execution and delivery by the lessee of a duplicate or counterpart of the lease in pursuance of paragraph (f) of sub-section (5A) of this section.</p> <p>“(5D) A contract to make or accept a lease under this section may, if registered, be enforced by or against every person on whom the lease, if granted, would be binding.”.</p>
26	Section 39A . .	<p>(a) Omit “ the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1938,” (wherever occurring), insert “ the commencement of this Act ”.</p> <p>(b) Omit from paragraph (b) of sub-section (1) “ under the Conveyancing Act, 1919,”, insert “ under any law in force in the Territory ”.</p> <p>(c) Omit from paragraph (b) of sub-section (2) “ the Conveyancing, Trustee and Probate (Amendment) Act, 1938 ”, insert “ this Act ”.</p>
27	Section 39B . .	Omit “ the commencement of the Conveyancing, Trustee and Probate (Amendment) Act, 1938 ”, insert “ the commencement of this Act ”.
28	Section 43 . .	<p>(a) Omit from sub-section (11) “, and the repeal of section eighteen of the Trustee Act, 1898, apply ” insert “ applies ”.</p> <p>(b) After sub-section (11) add the following sub-section :— “(12) Notwithstanding the provisions of section five of the <i>Trustee Ordinance 1957</i>, section eighteen of the Trustee Act, 1898, in its application in the Territory, continues to apply in relation to a trust where the instrument, if any, creating the trust came into operation before the commencement of this Act.”.</p>

## SECOND SCHEDULE—continued.

Item no.	Provisions modified.	Modifications.
29	Section 44 ..	<p>(a) Omit from sub-section (1A) "Two thousand pounds", insert "Five thousand pounds".</p> <p>(b) Omit from sub-section (6) "by statute or in equity", insert "by a law in force in the Territory, or in equity".</p> <p>(c) Omit sub-section (8), insert—  " (8) This section applies to trusts created before the commencement of this Act and to trusts created after the commencement of this Act."</p>
30	Section 46 ..	<p>(a) Omit from sub-section (10) "section one hundred and fifty-three of the Conveyancing Act, 1919", insert "section fifty of the <i>Administration and Probate Ordinance 1929-1953</i>".</p> <p>(b) Omit from sub-section (12) "the Registrar-General Crown Solicitor or other person registering or certifying title", insert "the Registrar".</p> <p>(c) Omit sub-section (14), insert—  " (14) In this section—  'insane patient' means an insane patient within the meaning of the Lunacy Act, 1898;  'manager', in relation to an incapable person, means the person authorized by law to undertake the care and management of the property of the incapable person that is in the Territory."</p>
31	Section 47 ..	<p>(a) Omit from sub-section (2) "the same", insert "the money, and may exercise, in addition to the powers conferred on him by this section, such other powers as would be conferred on him by this Ordinance if he had been duly appointed the sole trustee of the money by a person having the power so to appoint him."</p> <p>(b) Omit sub-section (3), insert the following sub-sections:—  " (3) Where the money is held in trust for an infant, an insane person or an incapable person, the public trustee may—  (a) if the money does not exceed in amount Two hundred and fifty pounds—at his discretion; and  (b) if the money exceeds in amount Two hundred and fifty pounds but does not exceed in amount One thousand pounds—with the consent of the Judge,  apply the whole or any part of the money for or towards the maintenance, education or benefit of the infant, insane person or incapable person, or pay the whole or any part of the money to such person as the public trustee thinks fit to be so applied by that person.  " (3A) Where money has been paid to the public trustee under sub-section (1) of this section and the public trustee has, during a period of six years after the money was paid to him, had no knowledge of the existence or address of a person who is, or claims to be, entitled to the money or a share in the distribution of the money, the public trustee shall forthwith pay an amount equal to that money or that share, as the case may be, to the Treasurer, and furnish the Treasurer with particulars of the amount.  " (3B) A receipt given by the Secretary to the Department of the Treasury, or by an officer authorized by him to give such receipts, shall be an effectual discharge to the public trustee in respect of moneys so paid.</p>



SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
31	Section 47— <i>continued.</i>	<p>“(3C) A person claiming to be entitled to money, or a share in the distribution of money, paid to the Treasurer under sub-section (3A) of this section may apply to the Court for an order for payment to him of the amount due to him, and the Court, if satisfied that the person is entitled to the money or to a share in the distribution of the money, shall make an order for payment accordingly.</p> <p>“(3D) Upon the making of an order under the last preceding sub-section for payment of money to a person, or where the Treasurer is otherwise satisfied that a person is entitled to money, or a share in the distribution of money, paid to the Treasurer under this section, the Treasurer shall pay an amount equal to that money or to that share, as the case may be, to that person.</p> <p>“(3E) The provisions of this section do not, except as expressly declared in this section—</p> <p>(a) deprive a person of any other right or remedy to which he is entitled against a trustee or any other person; or</p> <p>(b) impose on the public trustee an obligation to make or continue to make any enquiries or investigations as to the person entitled to moneys paid to him under sub-section (1) of this section after those moneys have been paid to the Treasurer in pursuance of sub-section (3A) of this section.</p> <p>“(3F) In this section—</p> <p>(a) ‘the Department of the Treasury’ means the Department of the Treasury of the Commonwealth; and</p> <p>(b) ‘the Treasurer’ means the Treasurer of the Commonwealth.”.</p>
32	Section 51 . .	<p>(a) Omit from sub-section (4) “ , except in the case of a business forming part of the trust property,”.</p> <p>(b) Add at the end of sub-section (4) “ unless the Court approves the costs or fee being so paid or borne or unless the costs are, or the fee is, incurred in respect of the examination or audit of the accounts of a business forming part of the trust property.”.</p>
33	Section 60 . .	<p>Omit sub-section (2), insert—</p> <p>“(2) For the purposes of the last preceding sub-section, the requisite notice is a notice published in the <i>Commonwealth of Australia Gazette</i> and in a newspaper printed and circulating in the Territory and such other notice or notices, if any, published within or outside the Territory as would, in a special case, be necessary, in order to comply with section sixty-four of the <i>Administration and Probate Ordinance 1929–1953</i>, in the case of an intended distribution of assets by an executor or administrator.”.</p>
34	Section 61 . .	<p>Omit sub-section (1), insert—</p> <p>“(1) Section sixty-six of the <i>Administration and Probate Ordinance 1929–1953</i> applies to an assignment or a conveyance executed by a trustee and to a distribution of trust property in like manner as that section applies to an assignment by a legal representative and to a distribution of the estate of a testator or an intestate person.”.</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
35	Section 63 ..	<p>(a) Omit from sub-section (1) "or the Master in Equity".</p> <p>(b) Omit from sub-section (4) "or the Master".</p> <p>(c) Omit sub-sections (5), (6) and (7).</p> <p>(d) Omit from sub-section (8) "or Master".</p> <p>(e) Omit from sub-section (10) "or Master".</p> <p>(f) Omit from sub-section (11) "or Master".</p> <p>(g) Omit from sub-section (11) " , but subject to such right of appeal to the Full Court as may be prescribed by rules of court ".</p>
36	Section 64 ..	Omit from sub-section (3A) " This subsection shall be deemed to have commenced on the first day of March, one thousand nine hundred and twenty-six. ".
37	Section 67 ..	<p>Omit and insert—</p> <p>" 67. A delegation under this Part shall be deemed to be a power of attorney within the meaning of the <i>Powers of Attorney Ordinance 1956-1957</i>, and that Ordinance, except sections six, seven and eight, applies to such a delegation. "</p>
38	Section 68 ..	<p>(a) Omit sub-section (1), insert—</p> <p>" (1) An instrument by which a trust or the right to consent to the exercise of a trust or power is delegated shall be deemed not to be registered for the purposes of this Act unless it has been registered under the <i>Registration of Deeds Ordinance 1957</i>. "</p> <p>(b) After " provisions of ", second occurring in sub-section (2), insert " the <i>Real Property Ordinance 1925-1957</i>, or ".</p>
39	Section 70 ..	Omit sub-section (7).
40	Section 75 ..	<p>Omit sub-section (1), insert—</p> <p>" (1) Subject to this section, where a mortgagee of land has died—</p> <p>(a) if the land is subject to the provisions of the <i>Real Property Ordinance 1925-1957</i>, or the <i>Real Property Act, 1900</i>—the Court may make an order discharging the mortgage ; and</p> <p>(b) in any other case—the Court may make an order vesting the land in such person or persons, in such manner and for such estate as the Court directs. "</p>
41	Section 78 ..	<p>(a) Omit sub-sections (3) and (4), insert the following sub-section :—</p> <p>" (3) Land does not vest by virtue of a vesting order made under this Part—</p> <p>(a) where the land is subject to the provisions of the <i>Real Property Ordinance 1925-1957</i>, or the <i>Real Property Act, 1900</i>—until the appropriate entries of the vesting are made in the register kept under that Ordinance or Act, as the case may be ;</p> <p>(b) where the land is subject to the provisions of the <i>Crown Lands Acts</i>—until the order is registered under the <i>Registration of Deeds Act, 1897</i>, and the appropriate entries of the vesting are also made in the appropriate register kept under the Acts to which the land is subject ; and</p>

SECOND SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
41	Section 78— <i>continued.</i>	<p>(c) in any other case—until the order is registered under the Registration of Deeds Act, 1897.”</p> <p>(b) Omit from sub-section (5) “ subsections three or four”, insert “ sub-section (3) ”.</p> <p>(c) Omit from sub-section (5) “ by or under any Act, whether of this State or otherwise ” (wherever occurring), insert “ by or under a law in force in the Territory or otherwise ”.</p>
42	Section 81 ..	Omit from sub-section (4) “ and under this or any other Act ”, insert “, under this Act or under any other Act or Ordinance in force in the Territory ”.
43	Section 82 ..	Omit from sub-section (8) “ the Registrar-General Crown Solicitor or other person registering or certifying title”, insert “ the Registrar ”.
44	Section 82A ..	<p>(a) Omit from sub-section (1) “ five hundred pounds ” insert “ One thousand pounds ”.</p> <p>(b) Omit sub-section (3), insert—  “(3) A purchaser paying money upon a sale, or a mortgagee advancing money upon a mortgage, authorized by this section is not required to see to the application of the purchase money or mortgage money and the protection given by this sub-section extends to the Registrar.”</p> <p>(c) Omit from sub-section (4) “ the Conveyancing, Trustee and Probate (Amendment) Act, 1938 ”, insert, “ this Act ”.</p>
45	Section 83 ..	Omit “ or Probate Judge ” (wherever occurring).
46	Section 84 ..	Omit “ or Probate Judge ” (wherever occurring).
47	Section 89 ..	Omit “ the Supreme Court, in its lunacy jurisdiction”, insert “ the Court ”.
48	Section 91 ..	<p>(a) After “ any application ”, in sub-section (3), insert “ to the Court ”.</p> <p>(b) Omit sub-section (4).</p>
49	Section 94 ..	Omit.
50	Section 97 ..	Omit.
51	Section 98 ..	Omit from sub-section (2) “ the Master in Equity ”, insert “ the Registrar of the Court ”.
52	Section 101 ..	Omit.
53	Section 102 ..	<p>Omit and insert—</p> <p>“ 102. (1) Where a guardian, committee, receiver or other trustee appointed by the Court has been or is, by order in a particular cause or matter or by rules of court, directed to account from time to time or to file a report or account in the office of the Registrar of the Court, the Court may, in order to enforce compliance with the order or the rules of court, cause the guardian, committee, receiver or other trustee to be summoned before the Court to show cause why he should not be ordered to account or to file the report or account forthwith.</p> <p>“ (2) If the guardian, committee, receiver or other trustee does not, within the prescribed time or within such further time as is allowed by the Court, account or file the report or account in the prescribed manner he is liable to attachment in accordance with the practice of the Court.</p>

Item no.	Provisions modified.	Modifications.
53	Section 102— <i>continued.</i>	“(3) Under this section, the Court may cause a guardian, committee, receiver or other trustee to be summoned before the Court on its own motion or on the application of— (a) the parties to the cause or matter or any of those parties; or (b) the Registrar of the Court on behalf of those parties or any of those parties.”
54	Section 104..	Omit.
55	Section 105 and the heading immediately preceding that section	Omit.
56	Section 106..	Omit.
57	Schedule ..	Omit.

## THIRD SCHEDULE.

Section 11.

MODIFICATIONS OF THE PROVISIONS OF THE CONVEYANCING ACTS, 1919-1954,  
APPLIED IN THE TERRITORY BY SECTION 11 OF THIS ORDINANCE.

Item no.	Provisions modified.	Modifications.
1	Section 7 ..	(a) Omit from the definition of “ Administrator ” the words “ Wills, Probate and Administration Act, 1898 ”, insert “ <i>Administration and Probate Ordinance 1929-1953</i> ”. (b) Omit from the definition of “ Bankruptcy ” the words “ Companies Act, 1899 ”, insert “ Companies Act 1936 ”. (c) Omit the definition of “ Court ”. (d) After “ Act ” (second occurring), in the definition of “ Deed ”, insert “ and, in relation to land under the provisions of the <i>Real Property Ordinance 1925-1957</i> , includes an instrument having the effect of a deed under that Ordinance ”. (e) Omit from the definition of “ Disposition ” the words “ section eighty-three of the Wills, Probate and Administration Act, 1898 ”, insert “ section fifty-six of the <i>Administration and Probate Ordinance 1929-1953</i> ”. (f) Omit the definition of “ Trustee company ”, insert— “ ‘ Trustee company ’ means a trustee company for the purposes of the <i>Trustee Companies Ordinance 1947-1954</i> . ”
2	Section 66A..	After “ Master in Lunacy ”, in sub-section (2), insert “ or the court ”.
3	Section 66D..	After “ Master in Lunacy ”, in sub-paragraph (i) of paragraph (a) of sub-section (4), insert “ or the court ”.

THIRD SCHEDULE—*continued.*

Item no.	Provisions modified.	Modifications.
4	Section 151D	<p>Add at the end thereof the following sub-sections :—</p> <p>“(3) Where land that is subject to the provisions of the <i>Real Property Ordinance 1925–1957</i> is affected by a registered deed, the Registrar shall, subject to the next succeeding sub-section, make an entry of the vesting of the land or enter, vary or withdraw such caveats as he deems proper in the circumstances.</p> <p>“(4) The Registrar is not bound to act under the last preceding sub-section unless the person in whom the land is to be vested—</p> <ul style="list-style-type: none"> <li>(a) requests, in writing, that the entry be made ;</li> <li>(b) furnishes such evidence in support of the request as the Registrar may reasonably require ; and</li> <li>(c) gives such notice, if any, of the request to such persons as the Registrar may reasonably require.</li> </ul> <p>“(5) Where a registered deed affects land that is subject to the provisions of the <i>Real Property Act, 1900</i>, or the <i>Crown Lands Acts</i> or affects land the title to which is registered under the provisions of the <i>Registration of Deeds Act, 1897</i>, the deed shall be deemed not to have any force or effect in relation to that land—</p> <ul style="list-style-type: none"> <li>(a) until the deed is registered in the office of the Registrar-General of the State of New South Wales in the manner provided by the law of that State for the registration of deeds of a similar nature ; and</li> <li>(b) where the land affected is subject to the provisions of the <i>Real Property Act, 1900</i>, until the Registrar-General of that State has, in the manner prescribed by or for the purposes of that Act, made an entry of the vesting of the land or has entered, varied or withdrawn such caveats as he deems proper in the circumstances.</li> </ul> <p>“(6) In this section—</p> <ul style="list-style-type: none"> <li>(a) a reference to a ‘ trust corporation ’ shall be read as if it did not include a reference to the public trustee ;</li> <li>(b) ‘ registered deed ’ means a deed registered under the <i>Registration of Deeds Ordinance 1957</i>; and</li> <li>(c) ‘ the Crown Lands Acts ’ has the same meaning as in the <i>Trustee Act, 1925–1942</i>.”. </li></ul>

By Authority: A. J. ARTHUR, Commonwealth Government Printer, Canberra.