

AUSTRALIAN CAPITAL TERRITORY

Imperial Acts (Substituted Provisions) Ordinance 1986

No. 19 of 1986

I, THE GOVERNOR-GENERAL of 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*.

Dated 18 June 1986.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance to make provisions in substitution for certain Acts of the United Kingdom, and for purposes connected therewith

Short title

1. This Ordinance may be cited as the *Imperial Acts (Substituted Provisions) Ordinance 1986*.¹

Interpretation

2. (1) In this Ordinance, unless the contrary intention appears—"applied Imperial Act" means—

- (a) an Imperial Act that—
 - (i) extended to the Territory as part of the law of the Territory of its own force immediately before 3 September 1939; and

- (ii) had not ceased so to extend to the Territory before the commencing date; and
- (b) an Imperial Act, other than an Imperial Act referred to in paragraph (a)—
 - (i) that came into force as part of the law of the Colony of New South Wales—
 - (A) by virtue of the common law upon the foundation of that Colony; or
 - (B) by virtue of section 24 of the Australian Courts Act, 1828 of the United Kingdom;
 - (ii) that was in force in the State immediately before 1 January 1911;
 - (iii) that was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909*; and
 - (iv) that had not ceased to be in force in the Territory before the commencing date;

“commencing date” means the date on which notice of this Ordinance having been made was published in the *Gazette*;

“Imperial Act” means—

- (a) a public Act of the Parliament of England included in the public Acts of the Parliament of England from and including the Act 20 Hen. 3 c.1 (the Statute of Merton), enacted in 1235, to and including the Act 6 Anne c.34, enacted in 1706;
- (b) a public Act of the Parliament of Great Britain included in the public Acts of the Parliament of Great Britain from and including the Act 6 Anne c.35, enacted in 1707, to and including the Act 41 Geo. 3 c.32, enacted in 1800; or
- (c) a public Act of the Parliament of the United Kingdom included in the public Acts of the Parliament of the United Kingdom from and including the Act 41 Geo. 3 c.1, enacted in 1801, to and including the Act 2 and 3 Geo. 6 c.80, enacted in 1939;

“State” means the State of New South Wales.

(2) Where an applied Imperial Act that extended to the Territory as part of the law of the Territory of its own force immediately before the commencing date had been amended before 3 September 1939 under a provision of that Act or by or under a provision of another Imperial Act, a reference in this Ordinance to that applied Imperial Act shall be read as a reference to that applied Imperial Act as so amended.

(3) A reference in this Ordinance to an applied Imperial Act other than such an Act to which sub-section (2) applies shall be read as a reference to that applied Imperial Act—

- (a) as amended before 25 July 1828 under a provision of that Act or by or under a provision of another Imperial Act;
- (b) as amended on or after that date and before 1 January 1911 by or under a provision of another Imperial Act that extended to the State as part of the law of the State of its own force; and
- (c) as amended on or after 1 January 1911 and before 3 September 1939 by or under a provision of another Imperial Act that extended to the Territory as part of the law of the Territory of its own force,

as the case requires.

Repeal and replacement of applied Imperial Acts

3. (1) An applied Imperial Act the citation of which is specified in column 1 of Schedule 1 ceases to be in force in the Territory on the commencing date but, by force of this sub-section, there is substituted for the provisions of the whole of that Act, or, if a particular section is specified, or particular sections are specified, in column 3 of that Schedule opposite to the citation of that Act in column 1, for the provisions of that section or those sections, as in force in the Territory immediately before the commencing date, the provisions set out in the Part of Schedule 2 specified in column 4 of Schedule 1 opposite to the citation of that Act in column 1.

(2) The provisions set out in a Part of Schedule 2 have effect, subject to, and in accordance with, the provisions of this Ordinance, as laws of the Territory.

Substituted provisions

4. (1) Unless the context otherwise requires, the rules of law applicable to the interpreting of consolidating acts apply to and in relation to the interpreting of the provisions in a Part of Schedule 2 as if those provisions comprised an Act

consolidating the provisions of the applied Imperial Act, or applied Imperial Acts, for which the provisions in that Part are substituted by this Ordinance.

(2) Where a provision set out in a Part of Schedule 2 is, on the commencing date, inconsistent with a provision of another law in force in the Territory, not being an applied Imperial Act that continues to be in force in the Territory on that date, the provision of that other law prevails and the provision so set out, to the extent of the inconsistency, has no force or effect in the Territory.

Application of substituted provisions

5. (1) If an Imperial Act the citation of which is specified in column 1 of Schedule 1, or a part of such an Act specified in column 3 of that Schedule opposite to the citation of that Act in column 1—

- (a) has never had effect in the Territory as part of the law of the Territory; or
- (b) ceased, before the commencing date, to have effect in the Territory as part of the law of the Territory,

nevertheless—

- (c) the provisions set out in the Part of Schedule 2 specified in column 4 of Schedule 1 opposite to the citation of that Act in column 1 of Schedule 1 have effect as provided in sub-section 3 (2); and
- (d) sections 4, 6 and 9 and sub-section 10 (1) apply to and in relation to those provisions as if—
 - (i) that Imperial Act or that part of that Imperial Act, as the case may be, were an applied Imperial Act for the purpose of this Ordinance and had been in force in the Territory immediately before the commencing date; and
 - (ii) those provisions were substituted for that Imperial Act or that part of that Imperial Act by virtue of sub-section 3 (1).

(2) Nothing in sub-section (1)—

- (a) shall be taken to alter the law of the Territory as in force at any time before the commencing date; or
- (b) shall be taken to render invalid, on and after the commencing date, any act or thing that was done or suffered before that date and was

duly and validly done or suffered according to the law in force in the Territory when the act or thing was done or suffered.

References to certain Imperial Acts

6. (1) Where, by virtue of section 3, the provisions of a Part of Schedule 2 are substituted for the whole of an applied Imperial Act the citation of which is specified in column 1 of Schedule 1, a reference to that Act in an Ordinance that was in force immediately before the commencing date shall, unless the contrary intention appears, be read as a reference to the provisions of that Part of Schedule 2.

(2) Where, by virtue of section 3, the provisions of a Part of Schedule 2 are substituted for the provisions of a section or sections specified in column 3 of Schedule 1, opposite to the citation of an applied Imperial Act in column 1 of Schedule 1, a reference to those sections, or any of those sections, in an Ordinance that was in force immediately before the commencing date shall, unless the contrary intention appears, be read as a reference to the provisions of that Part of Schedule 2.

Savings

7. (1) The ceasing of an applied Imperial Act, or of a part of an applied Imperial Act, to be in force in the Territory by virtue of this Ordinance does not—

- (a) revive anything not in force or existing within the Territory at the time when that Act, or that part of the Act, so ceased to be in force;
- (b) affect the previous operation of that Act, or of that part of that Act, within the Territory, or anything duly done or suffered under that Act, or that part of that Act, in its application in the Territory;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under that Act, or that part of that Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against that Act, or that part of the Act, in its application in the Territory, or an investigation, legal proceeding or remedy in respect of such a penalty, forfeiture or punishment,

and such an investigation, legal proceeding or remedy may be instituted, continued or enforced, and such a penalty, forfeiture or punishment may be imposed, as if this Ordinance had not been made.

(2) Without limiting the generality of sub-section (1)—

- (a) the applied Imperial Act 29 Chas. 2. c. 3 (The Statute of Frauds, 1677) continues to be in force in the Territory on and after the commencing date, notwithstanding sections 3 and 4 of this Ordinance, in relation to promises or agreements made before the commencing date; and
- (b) the ceasing of any applied Imperial Act, or of any part of any such Act, to be in force in the Territory by virtue of this Ordinance does not affect any rule of law or equity applying in the Territory otherwise than by virtue of that Act, or of that part of that Act.

(3) Where an applied Imperial Act, or a part of such an Act, that ceases, by virtue of this Ordinance, to be in force in the Territory repealed (expressly or by necessary implication), confirmed, revived or perpetuated another Imperial Act, or a part of another such Act, that did not so cease to be in force in the Territory, that repeal, confirmation, revivor or perpetuation is not affected by reason that the first-mentioned Imperial Act, or the part of the first-mentioned Imperial Act, so ceased to be in force in the Territory.

Headings in Schedules

8. The headings to a Part of Schedule 2, or to a clause in a Part of Schedule 2, shall be treated as descriptive only and not as affecting the construction of the provisions contained in that Part or that clause, as the case may be.

Administration of substituted provisions

9. A provision set out in a Part of Schedule 2, being a provision in substitution for the whole or a part of an applied Imperial Act the citation of which is specified in column 1 of Part I of Schedule 1, shall be administered by the Minister of State of the Commonwealth specified in column 5 of that Schedule opposite to the citation of that Act in column 1.

Application of Ordinance

10. (1) This Ordinance, and each substituted provision in Schedule 2, shall be read and construed subject to the Constitution, and so as not to exceed the legislative power in respect of the Territory, to the intent that where any part of this Ordinance, or of such a provision, would, but for this sub-section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

(2) Nothing in section 3 or 4 affects the operation in the Territory of an Imperial Act that extends to, or has force or effect in, the Commonwealth as

part of the law of the Commonwealth by express words or necessary implication.

Administration of Ordinance

11. Except as otherwise provided by this Ordinance, this Ordinance shall be administered by the Attorney-General.

SCHEDULE 1

Sub-section 3 (1)

SUBSTITUTED PROVISIONS FOR CERTAIN APPLIED IMPERIAL ACTS

Column 1	Column 2	Column 3	Column 4	Column 5
Year and Citation of Act	Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed	Minister by whom substituted provisions administered
(1267) 52 Hen.3 c.23	Waste by tenant	Whole Act	Part 1	Minister for Territories
(1290) 18 Edw.1, St.1, c.1	Fee simple in land	Whole Act	Part 2	Minister for Territories
(1351) 25 Edw.3, St.5, c.5	Duties of executor of executor	Whole Act	Part 3	Attorney-General
(1357) 31 Edw.3, St.1, c.11	Duties of administrator on intestacy	Whole Act	Part 4	Attorney-General
(1540) 32 Hen.8 c.16	Aliens	Whole Act	Part 5	Minister for Territories
(1540) 32 Hen.8 c.34	Covenants in lease run with reversion	Whole Act	Part 6	Minister for Territories
(1571) 13 Eliz. c.5	Alienation of property to defraud creditors	Whole Act	Part 7	Minister for Territories
(1585) 27 Eliz. c.4	Alienation of property to defraud subsequent purchaser	Whole Act	Part 7	Minister for Territories
(1601) 43 Eliz. c.8	Intermeddling in estate of intestate	Whole Act	Part 8	Attorney-General
(1660) 12 Chas.2 c.24	Free and common socage tenure	Sections 1 and 4	Part 9	Minister for Territories

Column 1	Column 2	Column 3	Column 4	Column 5
Year and Citation of Act	Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed	Minister by whom substituted provisions administered
(1666) 18 and 19 Chas.2 c.11	Absence for 7 years evidence of death	Whole Act	Part 10	Minister for Territories
(1677) 29 Chas.2 c.3	Instruments required to be in writing	Sections 1,2,3,7,8 and 9	Part 11	Minister for Territories
(1678) 30 Chas.2 c.7	Liability of estate of executor for waste	Whole Act	Part 12	Attorney-General
(1685) 1 Jas.2 c.17	Administration of estate of intestate	Section 6	Part 4	Attorney-General
(1692) 4 Will. and Mary c.24	Liability of estate of personal representative for waste	Section 12	Part 12	Attorney-General
(1698) 11 Will.3 c.6	Aliens may hold property	Whole Act	Part 6	Minister for Territories
(1707) 6 Anne c.72	Proof of death of life-tenant, &c.	Whole Act	Part 11	Minister for Territories
(1709) 8 Anne c.18	Tenant for life may be sued for rent	Section 4	Part 13	Minister for Territories
(1730) 4 Geo.2 c.28	Renewals of head leases	Section 6	Part 14	Minister for Territories
(1737) 11 Geo.2 c.19	Actions for use and occupation	Section 14	Part 15	Minister for Territories
(1792) 32 Geo.3 c.60	Libel (Fox's Act)	Whole Act	Part 16	Attorney-General
(1800) 39 and 40 Geo.3 c.93	Trials for treason	Whole Act	Part 17	Attorney-General
(1812) 52 Geo.3 c.101	Powers of court in respect of charitable trusts	Whole Act	Part 18	Attorney-General
(1816) 56 Geo.3 c.100	Return of writ of habeas corpus	Whole Act	Part 19	Attorney-General
(1819) 60 Geo.3 and 1 Geo.4	Seizure of libellous papers	Whole Act	Part 20	Attorney-General

Column 1	Column 2	Column 3	Column 4	Column 5
Year and Citation of Act	Subject-matter of Act	Provisions in Schedule 2 substituted for—	Part of Schedule 2 where substituted provisions printed	Minister by whom substituted provisions administered
(1877) 40 and 41 Vic. c.59	Colonial stock	Sections 17 and 18	Part 21	Treasurer

SCHEDULE 2

Sub-section 3 (1)
and section 4

PROVISIONS SUBSTITUTED FOR CERTAIN PROVISIONS OF
IMPERIAL ACTS

PART 1—VOLUNTARY WASTE

(52 Hen. 3 c. 23 (1267)—Statute of Marlborough)

Application

1. This Part applies to—

- (a) a tenant for life or lives;
- (b) a tenant for a term;
- (c) a tenant under a periodical tenancy; and
- (d) a tenant at will,

other than a tenant by way of being a lessee under a lease granted under—

- (e) the *Australian National University (Leases) Ordinance 1967*;
- (f) the *Canberra College of Advanced Education (Leases) Ordinance 1977*;
- (g) the *Church Lands Leases Ordinance 1924*;
- (h) the *Church of England Lands Ordinance 1926*;
- (j) the *City Area Leases Ordinance 1936*;
- (k) the *Leases Ordinance 1918*;
- (m) the *Leases (Special Purposes) Ordinance 1925*; and

- (n) the *Leases (Wreck Bay Aboriginal Housing Company Limited) Ordinance 1977*.

Tenant liable for voluntary waste

2. Where a tenant of land to whom this Part applies commits voluntary waste, the tenant is liable in damages to a person entitled to an estate or interest in the land in remainder or reversion unless the tenant is authorized by licence of otherwise to commit waste.

Tenancy without impeachment of waste

3. Clause 2 does not apply to a tenant who holds an estate or tenancy without impeachment of waste.

Tenancy at will

4. Nothing in this Part affects any right to determine a tenancy at will.

PART 2—LAND HELD IN FEE SIMPLE

(18 Edw. 1, St. 1, c. 1 (1290)—*Quia Emptores*)

Holding of land in fee simple

1. Land held of the Crown in fee simple may be conveyed in fee simple without licence or fine, and the person to whom land is so conveyed holds the land of the Crown in the same manner as the land was held before the conveyance took effect.

PART 3—EXECUTOR OF EXECUTOR REPRESENTS ORIGINAL TESTATOR

(25 Edw. 3, St. 5, c. 5 (1351))

Executor of executor

1. Where—
- (a) probate of the will of a testator has been granted to a person (in this Part referred to as the “original executor”) as the sole executor, or as one of the executors, of the will of the testator;
 - (b) the original executor was, immediately before his or her death, the sole, or the last surviving, executor of the will of the testator; and

- (c) probate of the will of the original executor is granted to the executor, or one of the executors, (in this Part referred to as the “succeeding executor”) of the will of the original executor,

the succeeding executor becomes, upon the grant of probate of the will of the original executor—

- (d) the executor of the will of the testator; and
- (e) the executor of the will of any other testator of whose will the testator was, immediately before his or her death, the executor by virtue of the application, or successive applications, of this clause.

When ceases to represent deceased

2. Where, after a person has become the executor of the will of a testator by virtue of the application, or of successive applications, of clause 1, another person who was appointed an executor of the will of that testator is granted probate of that will, the first-mentioned person ceases, upon the grant of that probate, to be the executor of the will of that testator.

Rights and liabilities of executor of executor

3. While a person who has become the executor of the will of a testator by virtue of the application, or of successive applications, of clause 1, continues to be the executor of the will of testator—

- (a) the person has the same rights in respect of the estate of that testator as the original executor, or the original executors, would have if living; and
- (b) the person is, to the extent to which the estate of the testator has come to his or her hands, answerable as if the person were the original executor, or one of the original executors, as the case may be, of the will of the testator.

Application

4. This Part applies to and in relation to a testator whether the testator died before, or dies on or after, the commencing date.

PART 4—RIGHTS AND DUTIES OF ADMINISTRATOR OF DECEASED ESTATE

(31 Edw. 3, St. 1, c. 11 (1357) and 1 Jas. 2 c. 17, section 6 (1685))

Rights and duties of administrator

1. A person to whom administration of the estate of a deceased person is granted—
 - (a) has, subject to any limitations contained in the grant, the same rights and liabilities as the person would have if the person were the executor of the deceased; and
 - (b) is accountable in like manner as the person would be accountable if the person were the executor of the deceased.

Application

2. This Part applies to and in relation to the administration of the estate of a deceased person whether that person died before, or dies on or after, the commencing date.

PART 5—RIGHTS AND LIABILITIES OF ALIENS

(32 Hen. 8 c. 16 (1540) and 11 Will. 3 c. 6 (1698))

Person who is not an Australian citizen may hold property

1. Real or personal property of any kind may be acquired, held and disposed of by a person who is not an Australian citizen in the same manner as it may be acquired, held and disposed of by a person who is an Australian citizen.

Person who is not an Australian citizen may deal in property

2. Title to real or personal property of any kind may be derived from, through or in succession to a person who is not an Australian citizen in the same manner as it may be derived from, through or in succession to a person who is an Australian citizen.

Exceptions

3. Nothing in clause 1 or 2 shall be taken—
 - (a) to qualify a person who is not an Australian citizen for any office or to confer on such a person a right to be enrolled on any electoral roll;

- (b) to qualify a person who is not an Australian citizen to be the owner of a British ship or a share in a British ship; or
- (c) to entitle a person who is not an Australian citizen to any rights and privileges in the Territory as an Australian citizen.

Person who is not an Australian citizen bound by laws

4. A person who is not an Australian citizen is bound by the laws of the Territory in the same manner as a person who is an Australian citizen.

PART 6—LESSEE’S COVENANTS AND LESSOR’S COVENANTS

(32 Hen. 8 c. 34 (1540))

Covenants run with reversion

1. (1) Upon the grant of a lease of land—

- (a) the rent reserved by the lease;
- (b) the benefit of every covenant in, or other provision of, the lease required to be observed or performed by the lessee, being a covenant or other provision relating to the subject-matter of the lease; and
- (c) every condition of re-entry, or other condition, contained in the lease,

shall be annexed to, and shall go with, the reversionary estate in the land, or in any part of the land, immediately expectant on the term granted by the lease notwithstanding the severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by the person from time to time entitled, subject to the term so granted, to the income of the whole, or any part, of the land leased.

(2) Sub-clause (1) extends to a covenant to do some act relating to the land leased notwithstanding that the subject-matter may not be in existence when the covenant is made.

(3) The benefit of every condition of re-entry or forfeiture for a breach of a covenant or condition contained in a lease may be enforced, and taken advantage of, by the person from time to time entitled, subject to the term granted by the lease, to the income of the whole, or any part, of the land leased, notwithstanding that the person became so entitled, by conveyance or otherwise, after the condition of re-entry or forfeiture had become enforceable.

(4) Sub-clauses (1), (2) and (3) do not render enforceable by a person a condition of re-entry or forfeiture, or any other condition, that had been waived or released before the person became entitled to enforce the condition.

(5) This clause applies to—

- (a) a lease made on or after the commencing date;
- (b) rent accruing due, on or after the commencing date, under a lease made before that date; and
- (c) the benefit of a condition of re-entry or forfeiture for a breach, committed on or after the commencing date, of a covenant, condition or provision contained in a lease made before the commencing date.

Lessor's obligations run with reversion

2. (1) Upon the lease of land, the obligation imposed on the lessor by a covenant in the lease, being a covenant relating to the subject-matter of the lease—

- (a) shall, to the extent (if any) to which the lessor had power to bind the reversionary estate expectant on the term granted by the lease, be annexed to, and go with, that reversionary estate in that land and in every part of that land;
- (b) may be enforced and taken advantage of by the person in whom the term is from time to time vested by conveyance, devolution of law or otherwise; and
- (c) to the extent (if any) to which the lessor had power to bind the person from time to time entitled to that reversionary estate, may be enforced, and taken advantage of, against any person so entitled.

(2) This clause applies to—

- (a) a lease granted on or after the commencing date; and
- (b) a breach committed, on or after the commencing date, of a covenant contained in a lease made before the commencing date.

**PART 7—ALIENATION OF PROPERTY WITH INTENT TO
DEFRAUD CREDITORS OR SUBSEQUENT PURCHASERS**

(13 Eliz. c. 5 (1571) and 27 Eliz. c. 4 (1585))

Alienation in fraud of creditors

1. Subject to clause 2, an alienation of property made, whether before or after the commencing date, with intent to defraud creditors is voidable at the instance of a person prejudiced by the alienation.

Exception

2. Clause 1—

- (a) shall not be taken to affect the operation of the *Bankruptcy Act 1966*; and
- (b) does not extend to any estate or interest in property acquired by a person by virtue of that alienation as purchaser in good faith without notice of the intent to defraud creditors.

Instruments in fraud of purchaser

3. An instrument (not being a will) that operates, or would, on registration, operate, as a voluntary alienation of land made with intent to defraud a subsequent purchaser is voidable at the instance of a subsequent purchaser.

Application of clause 3

4. For the purpose of clause 3, where an instrument to which that clause applies, whether made before, on or after the commencing date, is registered before a subsequent purchase, it shall not be taken to have been made with intent to defraud a subsequent purchaser by reason only of the subsequent purchase or that the alienation of the land was not made for valuable consideration.

Acquisition for less than full value

5. An acquisition of any reversionary interest (including any interest by way of expectancy or possibility) in real or personal property made in good faith, without fraud or unfair dealing and for money or money's worth is not liable to be opened or set aside by reason only that it was acquired for less than its full value.

Application of clause 5

6. Clause 5 shall not be taken to affect the jurisdiction of a court to set aside or modify an unconscionable bargain.

Interpretation

7. In this Part, unless the contrary intention appears—

“land” includes tenements and hereditaments, corporeal or incorporeal, and every estate or interest therein, whether vested or contingent, freehold or leasehold, and whether at law or in equity;

“property” includes real and personal property, and any estate or interest in real or personal property, and any debt, any thing in action and any other right or interest;

“purchaser” means a purchaser for valuable consideration, and includes a lessee, mortgagee or other person who, for valuable consideration, acquires an interest in property;

“valuable consideration” includes marriage, but does not include a nominal consideration in money or money’s worth.

**PART 8—FRAUDULENTLY OBTAINING OR RETAINING
PROPERTY OF DECEASED PERSON**

(43 Eliz. c. 8 (1601))

Fraudulently obtaining or retaining property

1. A person—

(a) who—

(i) by obtaining, receiving or holding any real or personal property forming part of the estate of a deceased person; or

(ii) by effecting the release of a debt or liability due to the estate of a deceased person,

defrauds any creditor of the estate of the deceased person; or

(b) who, without full valuable consideration—

(i) obtains, receives or holds any real or personal property forming part of the estate of a deceased person; or

- (ii) effects the release of a debt or liability due to the estate of a deceased person,

is liable and chargeable as an executor in his or her own wrong to the extent of the real and personal property forming part of the estate of the deceased person that the person receives, or that comes into his or her hands, less—

- (c) the amount of any debt incurred for valuable consideration and without fraud that was due to the person from the deceased person at the time of his or her death; and
- (d) the amount of any payment made by the person which might have been properly made by the personal representative of the deceased person.

PART 9—LAND IN FEE SIMPLE HELD IN FREE AND COMMON SOCAGE TENURE

(12 Chas. 2 c. 24, sections 1 and 4 (1660))

Grants by Commonwealth on or after the commencing date

1. A grant of land by the Commonwealth in fee simple made on or after the commencing date shall be treated as a grant of the land in free and common socage without any incident of tenure for the benefit of the Crown.

Grants by State before the commencing date

2. A grant of land in fee simple made by the Crown in right of the Colony or State of New South Wales before 1 January 1911 or made by the Commonwealth on or after that date and before the commencing date shall be treated as if it were, and had been since 1 January 1911 or the date of the grant, whichever was the later date, a grant of the land in free and common socage without any incident of tenure for the benefit of the Crown.

PART 10—DETERMINATION OF ESTATE OR INTEREST FOR LIFE

(18 and 19 Chas. 2 c. 11 (1666) and 6 Anne c. 72 (1707))

Wrongful holding over

1. Where a person entitled to an estate or interest in any property, being an estate or interest determinable upon a life or lives, holds over or continues in possession of that property, of that estate or interest in that property or of the rents, profits or income thereof, after the determination of that estate or interest and without the express consent of the person next entitled upon the

determination of that estate or interest, the person is liable in damages, or to account for the rents, profits or income, or both, to the person entitled to the property, or to the rents, profit or income, after the determination of that estate or interest.

Evidence of death

2. (1) Where a reversion, remainder or other estate or interest in any property is expectant upon the determination of a life or lives, the person entitled to the reversion, remainder or other estate or interest upon the determination of the life or lives may, in proceedings in a court claiming relief on the basis that the determination of the life or lives has occurred, adduce evidence of belief that that life has, or those lives have, determined and of the grounds for that belief and, if evidence is so adduced, then, unless—

- (a) the person on whose life the reversion, remainder or other estate or interest is expectant is produced in court or otherwise shown to be living; or
- (b) the persons on whose lives the reversion, remainder or other estate or interest is expectant are produced in court or otherwise shown to be living,

as the case may be, the court may, in its discretion, order that the person, or the persons, shall, for the purpose of the proceedings, be treated as having died, and give relief accordingly.

(2) If, in proceedings in a court of a kind referred to in sub-clause (1), evidence is adduced that a person upon whose life the reversion, remainder or other estate or interest in property is expectant has remained beyond Australia, or has otherwise been absent from the place in Australia at which he or she might have been expected to have been found, for a period of 7 years or more, then, unless it is proved to the satisfaction of the court that the person is still living, the court may, in its discretion, order that the person shall, for the purpose of the proceedings, be treated as having died, and may give relief accordingly.

(3) If, after judgement has, in proceedings in respect of the death of a person of a kind referred to in sub-clause (2), been given against the plaintiff, other proceedings are brought by the plaintiff in a court on the basis that the life of the person has determined, the court may make an order staying those other proceedings permanently or until such future order or for such time as it may think fit.

(4) If, after a person having an estate or interest in property determinable on a life or lives has been evicted from, or deprived of, any property, or any estate or interest in any property, by reason of a judgment of a court giving relief on the basis that the life has, or the lives have, determined, it appears to a court that—

- (a) the person on whose life that estate or interest depended is alive, or was alive at the time when the person was evicted from, or deprived of, that property or estate or interest in property; or
- (b) the persons on whose lives that estate or interest depended are alive, or were alive at the time when the person was evicted from, or deprived of, that property or estate or interest in that property,

the court may give such relief as is appropriate in the circumstances.

PART 11—INSTRUMENTS REQUIRED TO BE IN WRITING

(29 Chas. 2 c.3, sections 1, 2, 3, 7, 8 and 9 (1677)—The Statute of Fraudes, 1677)

Instruments to be in writing

1. (1) Subject to this Part—

- (a) an interest in land cannot be created or disposed of by a person except—
 - (i) by writing signed by the person, or by the agent of the person duly authorized in writing to do so;
 - (ii) by the will of the person; or
 - (iii) by operation of law;
- (b) a declaration of trust by a person in respect of land or an interest in land must be—
 - (i) in writing signed by the person; or
 - (ii) made by the will of the person; and
- (c) a disposition by a person of an equitable interest or trust subsisting at the time of the disposition must be—
 - (i) in writing signed by the person or by the agent of the person duly authorized in writing to do so; or

- (ii) made by the will of the person.

(2) Sub-clause (1) does not affect the creation or operation of a resulting, implied or constructive trust.

Interest in land

2. An interest in land that is created by parol and not put into writing and signed by the person creating the interest, or by the agent of that person duly authorized in writing to do so, has effect, whether or not consideration is given for the interest, as an interest at will only.

Savings

3. Nothing in clause 1 or 2—

- (a) affects the creation by parol of a lease at the best rent that can reasonably be obtained without taking a fine, being a lease that takes effect in possession—
 - (i) for a term not exceeding 3 years without a right for the lessee to extend the term; or
 - (ii) for a term not exceeding 3 years with a right for the lessee to extend the term, at the best rent that can be obtained without taking a fine, for a further period, but so that the period of the lease and the period of the extension do not in the aggregate exceed 3 years;
- (b) invalidates a disposition by will;
- (c) affects an interest validly created before the commencing date;
- (d) affects a right to acquire an interest in land by virtue of taking possession of the land; or
- (e) affects the operation of the law relating to part performance.

Action does not lie on certain agreements unless in writing

4. (1) An action or proceeding does not lie against a person upon a contract for the sale or other disposition of land or of an interest in land unless the agreement on which the action or proceeding is brought, or a memorandum or note of that agreement, is in writing signed by that person or by another person duly authorized by that person to do so.

(2) Sub-clause (1) applies to contracts made before, on or after the commencing date, and does not affect the law relating to part performances or sales by a court.

(3) Sub-clause (1) applies to land under the provisions of the *Real Property Ordinance 1925*.

PART 12—LIABILITY OF PERSONAL REPRESENTATIVE OF DECEASED PERSON FOR WASTE COMMITTED BY THAT PERSON

(30 Chas. 2 c.7 (1678) and 4 Will. and Mary c. 24, section 12 (1692))

Persons liable for waste of deceased estate

1. Where a person, in this clause referred to as the “relevant person”, has, as the personal representative of a deceased person or as the executor in his or her own wrong of the will of a deceased person, wasted or converted to his or her own use any part of the estate of the deceased person, then, upon the death of the relevant person, the personal representative of the relevant person is, to the extent of the available assets of the relevant person, liable and chargeable in respect of that waste or conversion in the same manner as the relevant person would have been if the relevant person has not died.

PART 13—RECOVERY OF RENT FROM TENANT FOR LIFE

(8 Anne c. 18, section 4 (1709))

Tenant for life may be sued for rent

1. A person to whom rent is payable under a lease or demise for life or lives may, notwithstanding the continuance of the estate for life or lives, bring an action in a court of competent jurisdiction to recover arrears of rent due to the person under the lease or demise in the same manner as an action may be brought to recover rent due under a lease for a term of years.

PART 14—RENEWAL OF HEAD LEASE WITHOUT SURRENDER OF UNDER-LEASES

(4 Geo. 2 c. 28, section 6 (1730))

Renewal of head lease

1. Where a lease is duly surrendered for the purpose of being renewed, a new lease granted by the chief landlord is, notwithstanding that all or any of the under-leases have not been surrendered, as valid for all purposes as it would be

if all the under-leases derived from the lease had been surrendered in order to be renewed at or before the grant of the new lease.

Rights on renewal

2. Where a new lease is granted upon the surrender of a lease (in this clause referred to as the “original lease”)—

- (a) a person in whom an estate for life or lives, or for years, is from time to time vested by virtue of the new lease, and the executors and administrators of that person—
 - (i) are entitled to the rents reserved by any under-lease derived from the original lease;
 - (ii) are entitled to have the covenants and duties imposed by any under-lease derived from the original lease duly performed; and
 - (iii) are entitled to the same remedies for the recovery of those rents, or in respect of a breach of those covenants or duties, as if the original lease had not been surrendered but had remained in force;
- (b) any under-lessee by virtue of an under-lease derived from the original lease continues to hold the lands comprised in that under-lease as if the original lease had not been surrendered but had remained in force; and
- (c) the chief landlord is entitled to the same remedies, by way of entry upon the lands comprised in an under-lease derived from the original lease, for rents reserved by the new lease or for breaches of the covenants and duties imposed by the new lease (so far as those rents, covenants and duties do not exceed the rents reserved, or the covenants and duties imposed, by the original lease) as he or she would have if the original lease had not been surrendered but had remained in force or if each under-lease derived from the original lease had been surrendered and re-granted under the new lease.

Application

3. Clauses 1 and 2 do not apply to land under the provisions of the *Real Property Ordinance 1925*.

PART 15—ACTION FOR USE AND OCCUPATION OF LAND

(11 Geo. 2 c. 19, section 14 (1737))

Quantum of damages

1. In an action for damages for use and occupation of land, evidence may be given a demise of the land, whether by deed, by parol or otherwise, and of the rent reserved by that demise and shall be received by the court as evidence of the quantum of damages for the use and occupation of the land, but proof of such a demise is not a defence to the action.

PART 16—TRIALS FOR LIBEL

(32 Geo. 3 c. 60 (1792))

General verdict on trial

1. On the trial before a court of a person charged with the publication of a libel—

- (a) the jury may give a general verdict of guilty or not guilty upon the whole matter in issue; and
- (b) the court may, in its discretion, give its opinion and direction to the jury on the whole matter in issue,

in like manner as it may on the trial, before the court, of a person charged with some other offence.

Special verdict

2. Clause 1 does not prevent a jury from returning a special verdict on the trial of a person charged with the publication of a libel in like manner as it may do on the trial of a person charged with some other offence.

Motion in arrest of judgment

3. Nothing in clauses 1 and 2 shall be taken to affect any right of a defendant to move in arrest of judgment.

PART 17—TRIALS FOR TREASON

(39 and 40 Geo. 3 c. 93 (1800))

Manner of trial

1. A person charged with treason shall be arraigned and tried in like manner, and according to the like course and order of trial, in every respect as if the person were charged with murder.

PART 18—POWERS OF SUPREME COURT IN RESPECT OF CHARITABLE TRUSTS

(52 Geo. 3 c. 101 (1812))

Applications to court

1. Application may be made to the Supreme Court by any person for such relief, in relation to the administration of a trust for charitable purposes, as the circumstances require.

Orders of court

2. Where application is made to the Supreme Court under clause 1, the Court may make such order, including an order with respect to the costs of the proceedings, as it deems just in all the circumstances of the case.

Notice to be given to Attorney-General

3. Notice of an application under clause 1 shall be served on the Attorney-General of the Commonwealth and the Attorney-General may appear on the hearing of the application.

Jurisdiction of Supreme Court

4. Jurisdiction is vested in the Supreme Court to hear and determine applications under clause 1.

Action under order of court lawful

5. Action taken by trustees of a trust for charitable purposes in accordance with an order made by the Supreme Court under clause 2 shall, for all purposes, be deemed to have been duly and lawfully taken.

Interpretation

6. For the purposes of this Part the reference in clause 5 to an order made by the Supreme Court under clause 2, shall, in a case where an appeal has been instituted against such an order, be read as a reference to the order as affirmed

or varied on appeal or, if another order is made in place of it on appeal, as a reference to that other order.

PART 19—WRITS OF HABEAS CORPUS

(56 Geo. 3 c. 100 (1816))

Court may inquire into truth of a return of writ

1. Upon the return of a writ of habeas corpus, the court before which the writ is returnable may inquire into the truth of the matters set forth in the return of the writ.

PART 20—SEIZURE OF LIBELLOUS PAPERS

(60 Geo. 3 and 1 Geo. 4 c. 8 (1819))

Court may order seizure of papers

1. Upon the conviction of a person, by or before a court, for—
 - (a) publishing a blasphemous or obscene libel;
 - (b) publishing a seditious libel; or
 - (c) an offence against section 24D of the *Crimes Act 1914* of the Commonwealth,

the court may, if it is satisfied by evidence on oath that a person has in his or her possession or under his or her control any documents containing that libel, or written, printed or published in contravention of that section, as the case may be, make an order for the issue of a search warrant authorizing a person named in the warrant, with such assistance as the person thinks necessary, to enter at any time any house, vessel or place named or described in the warrant, if necessary by force, and to seize any such documents found in the house, vessel or place.

Staying execution of warrant

2. Where, after a court has made an order under clause 1 for the issue of a search warrant in relation to the conviction of a person, an appeal is instituted against the conviction, the court before which the appeal is instituted, or a judge of that court, may, upon application made by the person, make an order staying the issue or execution of the warrant for such period as the court deems fit and upon such conditions (if any) as the court deems fit.

Custody of papers seized

3. Where documents are seized by virtue of a warrant issued in pursuance of an order under clause 1, the documents shall be kept in safe custody at such place as the Attorney-General may from time to time direct until they are dealt with in accordance with clause 4.

Disposal of papers seized

4. Documents that are being kept in safe custody as provided in clause 3 shall—

- (a) in a case where an appeal against the conviction to which the documents relate is instituted and the conviction is quashed—be returned to the person from whom the documents were seized; or
- (b) in any other case—be destroyed upon the expiration of the period within which an appeal against the conviction may be instituted or, if an appeal against the conviction is instituted within that period, after the appeal has been finally disposed of.

Appeals

5. Where the conviction of a person to which clause 1 applies is quashed on appeal, any order made by a court under that clause, and any warrant issued in pursuance of such an order, shall be deemed to be quashed, but this shall not invalidate anything duly done under the order or warrant before the conviction is quashed.

PART 21—EVIDENCE OF MATTERS RELATING TO COLONIAL STOCK

(40 and 41 Vic. c. 59, sections 17 and 18 (1877))

Register to be evidence

1. (1) A register of stock kept in the United Kingdom to which the Colonial Stock Act, 1877 of the United Kingdom, as from time to time amended and in force in the United Kingdom, applies is evidence in a proceeding—

- (a) of the matters entered in it; and
- (b) if a person is entered in the register as the proprietor of colonial stock to which that Act applies—of the title of that person to that stock.

(2) Evidence of a register referred to in sub-clause (1) may be given in a proceeding by the production of—

- (a) a copy of, or an extract from, the register that is proved to be an examined copy of, or extract from, the register; or
- (b) a document that purports to be a copy of, or an extract from, the register, being a document that has endorsed on it, or annexed to it, a certificate by the person having the custody of the register certifying that the document is a true copy of, or extract from the register.

(3) The production of a document purporting to be a certificate referred to in sub-clause (2) is, in a proceeding, *prima facie* evidence that the person by whom the certificate purported to be signed is the person having the custody of the register concerned and that the certificate was signed and given by that person.

Certificates and lists to be evidence

2. (1) A certificate or list given under section 18 of the Colonial Stock Act, 1877 of the United Kingdom, as from time to time amended and in force in the United Kingdom, is evidence in a proceeding of the matters stated in it.

(2) The production of a document purporting to be a certificate or list referred to in sub-clause (1) is, in a proceeding, *prima facie* evidence that the person by whom it purports to have been given is the person duly authorized to give it and that it was duly given by that person.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 26 June 1986.