

AUSTRALIAN CAPITAL TERRITORY

New South Wales Acts Application Ordinance 1985

No. 25 of 1985

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 21 June 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

LIONEL BOWEN
Attorney-General

An Ordinance relating to the application in the Territory of certain Acts of the State of New South Wales and of certain Imperial Acts applying in the Territory by virtue of Acts of that State

Short title

1. This Ordinance may be cited as the *New South Wales Acts Application Ordinance 1985*.¹

Interpretation

2. In this Ordinance, other than a Schedule to this Ordinance—

- (a) a reference to a continued State Act shall be read as a reference to an Act of the State of New South Wales that—
 - (i) was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909*; and

- (ii) had effect, immediately before the date of commencement of this Ordinance, in the Territory as a law of the Territory as provided by section 4 of the *Seat of Government (Administration) Act 1910*,

being the Act as amended and in force in that State immediately before the commencement of the *Seat of Government Acceptance Act 1909* and, in a case where the Act had been amended by an Ordinance of the Territory before the date of commencement of this Ordinance, as so amended;

- (b) a reference to a continued Imperial Act shall be read as a reference to an Imperial Act specified in column 1 of Schedule 3 that—
 - (i) was adopted as a law of the State of New South Wales by the Act of that State specified in column 2 of that Schedule opposite to the short title of the Imperial Act in column 1; and
 - (ii) was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909*,

being, in a case where the Imperial Act had been amended or modified in its application in that State before the commencement of the *Seat of Government Acceptance Act 1909*, the Imperial Act as so amended or modified; and

- (c) a reference to the amendment of a continued State Act or of a continued Imperial Act shall be read as a reference to the modification of the Act by—
 - (i) the repeal or omission of any provision or other part of the Act, either with or without the substitution of a new provision or part in its place; or
 - (ii) the insertion in, or addition to, the Act of a new provision.

Repeal of certain continued State Acts

3. (1) This section applies to a continued State Act, other than—

- (a) a continued State Act specified in column 1 of Schedule 1 to the *New South Wales Acts Application Ordinance 1984*;
- (b) a continued State Act specified in column 1 of Schedule 1 to this Ordinance;

- (c) the Crimes Act, 1900 of the State of New South Wales as amended and in force in the Territory immediately before the commencement of this Ordinance;
- (d) the Lunacy Act, 1898 of the State of New South Wales as amended and in force in the Territory immediately before the commencement of this Ordinance;
- (e) the Inebriates Act, 1900 and the Inebriates (Amendment) Act, 1909 of the State of New South Wales as amended and in force in the Territory immediately before the commencement of this Ordinance;
- (f) the Married Women's Property Act, 1901 of the State of New South Wales as amended and in force in the Territory immediately before the commencement of this Ordinance; and
- (g) a Private Act of the State of New South Wales that was continued in force in the Territory by section 6 of the *Seat of Government Acceptance Act 1909* and had effect, immediately before the commencement of this Ordinance, in the Territory as a law of the Territory as provided by section 4 of the *Seat of Government (Administration) Act 1910*.

(2) Subject to sub-section (3), every continued State Act to which this section applies ceases to apply to the Territory as a law of the Territory upon the commencement of this Ordinance.

(3) Where a provision of a continued State Act to which this section applies amends a continued State Act specified in a Schedule referred to in sub-section (1), that provision of that Act does not cease to apply to the Territory as a law of the Territory upon the commencement of this Ordinance but the other provisions only of that Act so cease to apply by virtue of sub-section (2).

Amendment of certain continued State Acts

4. (1) Subject to sub-section (2), a continued State Act specified in column 1 of Schedule 1 shall be deemed to be amended by this Ordinance to the extent necessary for it to have effect in the Territory as a law of the Territory in the terms set out in Schedule 2.

(2) Where—

- (a) a provision (in this sub-section referred to as the relevant provision) of a continued State Act so specified amends another continued State Act so specified; and

- (b) the relevant provision has been omitted from the text of that first-mentioned continued State Act as set out in Schedule 2 (the amendment made by the relevant provision having been incorporated in the text of that other continued State Act as set out in Schedule 2),

sub-section (1) shall not be taken to effect the repeal of the relevant provision.

Amendment of continued Imperial Acts

5. A continued Imperial Act specified in column 1 of Schedule 3 shall be deemed to be amended by this Ordinance to the extent necessary for it to have effect in the Territory as a law of the Territory in the terms set out in Schedule 4.

Application of certain continued State Acts and continued Imperial Acts

6. (1) Nothing in section 4 shall be taken to prevent the continued State Acts specified in column 1 of Schedule 1, being those Acts as amended by this Ordinance, from continuing in force in the Territory, after the commencement of this Ordinance, under, and in accordance with, the provisions of section 6 of the *Seat of Government Acceptance Act 1909* and section 4 of the *Seat of Government (Administration) Act 1910*.

(2) Nothing in section 5 shall be taken to prevent the continued Imperial Acts specified in column 1 of Schedule 3, being those Acts as amended by this Ordinance, from continuing in force in the Territory, after the commencement of this Ordinance, under, and in accordance with, the provisions of section 6 of the *Seat of Government Acceptance Act 1909*.

Inconsistencies between continued Acts and other laws

7. (1) Where, upon the commencement of this Ordinance, a provision of a continued State Act as amended by this Ordinance (being a continued State Act specified in column 1 of Schedule 1) is inconsistent with a provision of another law in force in the Territory (not being a prescribed law), the provision of that other law prevails and the provision of that continued State Act, to the extent of the inconsistency, has no force or effect in the Territory.

(2) Where, upon the commencement of this Ordinance, a provision of a continued Imperial Act as amended by this Ordinance (being a continued Imperial Act specified in column 1 of Schedule 3) is inconsistent with a provision of another law in force in the Territory (not being a prescribed law), the provision of that other law prevails and the provision of that continued Imperial Act, to the extent of the inconsistency, has no force or effect in the Territory.

(3) In this section, a reference to a prescribed law shall be read as a reference to—

- (a) a continued State Act specified in column 1 of Schedule 1, as amended by this Ordinance;
- (b) a continued State Act specified in column 1 of Schedule 1 to the *New South Wales Acts Application Ordinance 1984*, as amended by that Ordinance;
- (c) a continued Imperial Act, as amended by this Ordinance; or
- (d) any other Imperial Act that—
 - (i) was in force in the State of New South Wales immediately before the commencement of the *Seat of Government Acceptance Act 1909*; and
 - (ii) was continued in force in the Territory by section 6 of that Act, being that Act as amended and in force in the Territory immediately before the commencement of this Ordinance.

Interpretation of Acts set out in Schedule 2

8. In an Act of New South Wales set out in Schedule 2, in its application in the Territory, unless the contrary intention appears—

- (a) a reference in the Act to the Supreme Court shall be read as a reference to the Supreme Court of the Australian Capital Territory;
- (b) a reference in the Act to the Court of Petty Sessions shall be read as a reference to the Court of Petty Sessions for the Territory;
- (c) a reference in the Act to the Minister shall be read as a reference to the Minister for the time being administering the Act in its application in the Territory and as including a reference to a Minister or Member of the Executive Council for the time being acting for and on behalf of that Minister;
- (d) a reference in the Act to a Magistrate shall be read as a reference to a person holding, or acting in, the office of Chief Magistrate for the Territory, or an office of Stipendiary Magistrate for the Territory, under the *Court of Petty Sessions Ordinance 1930*;
- (e) a reference in the Act to the Commissioner of Police or to a Deputy Commissioner of Police shall be read as a reference to the person holding, or performing the duties of, the office of Commissioner of

Police or Deputy Commissioner of Police, as the case may be, under the *Australian Federal Police Act 1979*;

- (f) a reference in the Act to an officer of police or member of a police force shall be read as a reference to a member, or a special member, of the Australian Federal Police;
- (g) a reference in the Act to a member of a police force holding a particular rank shall be read as a reference to a member, or special member, of the Australian Federal Police holding that rank but, if that rank does not exist as a rank in the Australian Federal Police, as a reference to a member, or a special member, of the Australian Federal Police holding the rank that is declared by regulations in force under the *Australian Federal Police Act 1979* to be the equivalent of that particular rank; and
- (h) a reference in the Act to the Registrar of Titles shall be read as a reference to the person holding, or performing the duties of, the office of Registrar of Titles under the *Real Property Ordinance 1925*, and exercising powers under that Ordinance and under the *Registration of Deeds Ordinance 1952*.

Footnotes to continued Acts

9. (1) The footnotes appearing at the end of a Part of Schedule 2 do not form part—

- (a) of the continued State Act the text of which is set out in that Part of that Schedule; or
- (b) of this Ordinance.

(2) The footnotes appearing at the end of a Part of Schedule 4 do not form part—

- (a) of the continued Imperial Act the text of which is set out in that Part of that Schedule; or
- (b) of this Ordinance.

Administration of Acts

10. (1) A continued State Act the short title of which is specified in column 1 of Schedule 1 shall be administered by the Minister of State of the Commonwealth specified in column 2 of that Schedule opposite to the short title of that Act in column 1.

(2) A continued Imperial Act the short title of which is specified in column 1 of Schedule 3 shall be administered by the Minister of State of the Commonwealth specified in column 3 of that Schedule opposite to the short title of that Act in column 1.

Administration of Ordinances

11. (1) The *New South Wales Acts Application Ordinance 1984* shall, except as otherwise provided by that Ordinance, be administered by the Attorney-General.

(2) This Ordinance shall, except as otherwise provided by it, be administered by the Attorney-General.

SCHEDULE 1

Sub-sections 4 (1)
and 10 (1)

ADMINISTRATION OF CONTINUED STATE ACTS THAT ARE
AMENDED BY THIS ORDINANCE

Column 1	Column 2
Short title of Act	Minister by whom administered
Partition Act 1900.....	Attorney-General
Pawnbrokers Act 1902	Minister for Territories
Piracy Punishment Act 1902	Attorney-General
Public Gates Act 1901	Minister for Territories
Public Instruction Act 1880.....	Minister for Education
Public Roads Act 1902	Minister for Territories
Real Property (Limitation of Actions) Act 1837	Attorney-General
Second-Hand Dealers and Collectors Act 1906	Minister for Territories
Stock Act 1901	Minister for Territories
Supreme Court Act 1841	Attorney-General
Truck Act 1900.....	Minister for Employment and Industrial Relations
Trust Property Act 1862	Attorney-General
Written Memorandum Act 1834.....	Attorney-General

SCHEDULE 2

Sub-sections 4 (1)

PART 1

PARTITION ACT 1900

No. 24, 1900

An Act to consolidate enactments relating to partition

Short title

1. This Act may be cited as the Partition Act 1900.

Court

3. In the interpretation of this Act, the term “Court” means the Supreme Court.

Power of Court to order sale instead of division

4. (1) In a suit for partition, where, but for this Act or the Act hereby repealed, a decree for partition might have been made—

- (a) if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, on the request of any of the parties interested, or on their behalf as hereinafter provided, and notwithstanding the dissent or disability of any others of them, order a sale of the property accordingly; and
- (b) if parties interested collectively to the extent of one moiety or upwards, or some persons as hereinafter provided on their behalf, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, order a sale of the property accordingly; and
- (c) if any party interested, or some person on his behalf as hereinafter provided, requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, unless the

SCHEDULE 2—continued

other parties interested in the property or some of them, or some persons on behalf of such parties respectively as hereinafter provided, undertake to purchase the share of the party requesting a sale, order a sale of the property.

(2) If such undertaking is given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit.

(3) The Court when making any order under this Act shall give all necessary consequential directions.

Authority for parties interested to bid

5. On any sale under this Act the Court may allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same or as to any other matters as to the Court may seem reasonable.

Court may appoint trustees to receive and apply moneys arising from sales otherwise the money to be paid into Court

7. (1) All money to be received on any sale under the authority of this Act may, if the Court thinks fit, be paid to any trustees of whom it approves, or otherwise the same shall be paid into Court.

(2) Such money shall be applied as the Court directs to some one or more of the following purposes, namely:

- (a) the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses and trusts;
- (b) the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or
- (c) the payment to any person becoming absolutely entitled.

Trustees may apply moneys in certain cases without application to Court

8. The application of the money in manner aforesaid may, if the Court so directs, be made by the trustees (if any) without any application to the Court or otherwise shall be made upon an order of the Court upon the application of the person who would be entitled to the possession or to the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

SCHEDULE 2—continued

Until money can be applied to be invested and dividends to be paid to parties entitled

9. (1) Until the money can be applied as aforesaid, in the same shall be dealt with as provided for by the rules of Court relating to the deposit and investment of moneys in Court.

(2) The interest and proceeds shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

Parties to partition suits

10. (1) Any person who, but for this Act or the Act hereby repealed, might have maintained a suit for partition, may maintain such suit against any of the parties interested without serving the others (if any) of those parties, and it shall not be competent for any defendant in the suit to object for want of parties.

(2) At the hearing of the suit, the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration.

(3) All persons who, if this Act or the Act hereby repealed had not been passed, would have been necessary parties to the suit shall be served with notice of the decree or order on the hearing, and, after such notice, shall be bound by the proceedings as if they had been originally parties to the suit and shall be deemed parties to the suit.

(4) All such persons may have liberty to attend the proceedings, and any such person may, within a time limited by rule of Court, apply to the Court to add to the decree or order.

Power to dispense with service of notice of decree or order in special cases

11. (1) Where notice of the decree or order on the hearing of the suit cannot be served on all the persons on whom that notice is hereinbefore required to be served, or cannot be so served without expense disproportionate at to the value of the property to which the suit relates, the Court may, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published at such times and in such manner as the Court thinks fit calling upon all persons claiming to be interested in such

SCHEDULE 2—continued

property who have not been so served to come in and establish their respective claims in respect thereof before, the Court, within a time to be thereby limited.

(2) After the expiration of the time so limited, all persons who have not so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the suit as if, on the day of the date of the order dispensing with service, they had been served with notice of the decree or order service whereof is dispensed with, and thereupon the powers of the Court under the Trustee Act 1925, in its application in the Territory, shall extend to their interest in the property to which the suit relates as if they had been the parties to the suit, and the Court may thereupon, if it thinks fit, direct a sale of the property and give all necessary consequential directions.

Proceedings where service is dispensed with

12. Where an order is made under this Act dispensing with service of notice on any person or class of person, and property is sold by order of the Court, the following provisions shall have effect:

- (a) The proceeds of sale shall be paid into Court to abide the further order of the Court.
- (b) The Court shall, by order, fix a time at the expiration of which the proceeds will be distributed and may from time to time, by further order, extend that time.
- (c) The Court shall direct such notices to be given by advertisement or otherwise as it thinks best adapted for notifying to any person on whom service is dispensed with who may not have previously come in and established their claims, the fact of the sale, the time of the intended distributions, and the time within which a claim to participate in the proceeds must be made.
- (d) If, at the expiration of the time so fixed or extended, the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons.
- (e) If, at the expiration of the time so fixed or extended, the interests of all the person interested have not been ascertained, and it appears to the Court that they cannot be ascertained or cannot be ascertained without expense disproportionate to the value of the property, or of the unascertained interest, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the

SCHEDULE 2—continued

rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear to have any prima facie right which ought to be so provided for although such right may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision for case of successive sales in the same suit

13. Where in a suit for partition two or more sales are made if any person who has, by virtue of this Act, been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

Request by infant, or person under disability

14. (1) In a suit for partition, a request for sale may be made or an undertaking to purchase given on the part of—

- (a) an infant by his next friend or guardian ad litem;
- (d) a person of unsound mind (whether so found by inquisition or not) by his committee, next friend or guardian ad litem, as the case requires;
- (e) any other person under disability by the person authorized to act on his behalf.

(2) The Court shall not be bound to comply with any such request or undertaking on the part of any such person unless it appears that the sale or purchase will be for his benefit.

SCHEDULE 2—continued**Sales, how effected**

15. Wherever the Court orders a sale under this Act, it may order such sale to be effected—

- (a) by the Court;
- (b) out of Court, subject to such restriction as the Court thinks fit; or
- (c) altogether out of Court.

Power to Court to direct sale of portion of property and partition of the remainder

16. In any suit for partition, where, by this Act, the Court is empowered to direct a sale of the property to which the suit relates, the Court may, if it thinks fit, direct a sale of a portion of the property, and a partition of the remainder.

Suit for partition to include suit for sale and distribution of the proceeds

17. For the purposes of this Act, a suit for partition shall include a suit for sale and distribution of the proceeds, and, in a suit for partition, it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Costs in suits for partition

18. In a suit for partition, the Court may make such order as it thinks just respecting costs up to the time of the hearing.

NOTES

- (a) The Partition Act 1900, in its application in the Territory, comprises the Partition Act 1900 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Partition Act 1900 in Part 1 of this Schedule.
- (b) Sections 2, 6, 19 and 20 were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Paragraphs 14 (1) (b) and (c) were omitted by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

- (d) The Act repealed by the Partition Act 1900 of New South Wales was Act 41 Vic. No. 17.

PART 2

PAWNBROKERS ACT 1902 No. 66, 1902

An Act to consolidate the enactments regulating the trade or business of pawnbrokers

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Pawnbrokers Act 1902.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“article” includes every species of chattels and goods whatsoever;

“licence” means a licence granted under this Act to carry on the trade or business of a pawnbroker;

“pawnbroker” means a person who carries on business or seeks his livelihood in or by advancing upon interest, or for or in expectation of profit, gain, or reward, any sum of money upon security, whether collateral or otherwise, of any article taken by such person by way of pawn, pledge, or security.

To whom Act not to apply

4. Nothing in this Act shall be construed to apply to loans or advances made on any goods, chattels, live stock, wool, bonds, bills, title-deeds, or other security by merchants, bankers, commission agents, brokers, or licensed auctioneers in the ordinary and bona fide course of mercantile or banking transactions if the interest on any such loans or advances does not exceed the rate of 14 per centum per annum.

SCHEDULE 2—continued**PART II—LICENCES****Penalty on pawnbroking without licence**

5. Whosoever carries on the trade or business of a pawnbroker without having previously obtained a licence, shall, for such offence, be liable to a penalty not exceeding \$40.

Manner of obtaining licence

6. (1) Any person wishing to obtain a licence shall deliver to the Clerk of the Court of Petty Sessions an application, in the form contained in the First Schedule, together with a certificate in the form contained in the said Schedule, signed by 5 householders residing in the Territory.

(2) The Court of Petty Sessions may, if satisfied as to the character of the person so applying, grant a licence to such person in the form contained in the Second Schedule.

(3) All matters of applications for licences shall be heard and determined in open court, and shall be judicial inquiries.

(4) Every licence shall be delivered to the person applying for it on payment of a fee of \$20.

Duration of licence

7. Every licence shall, subject to the provisions of this Act, be in force for one year from the date thereof.

Record of licence to be kept

8. The Clerk of the Court of Petty Sessions shall keep an alphabetical record of all licences granted by the Court of Petty Sessions.

Separate licence to be taken out for each shop, &c.

9. No pawnbroker holding a licence shall, by virtue of one licence, keep more than one house, shop, or other place for taking in goods or chattels to pawn, but, for each and every house, shop, or other place which any person keeps for the purposes aforesaid, a separate and distinct licence shall be taken out and paid for.

Partner's licence

10. Persons in partnership and carrying on the trade or business of a pawnbroker in one house, shop, or tenement only shall not be obliged to take

SCHEDULE 2—continued

out more than one licence in any one year for carrying on such trade or business.

PART III—BUSINESS OF PAWNBROKING

Pawnbroker's name, &c., to be painted on his premises

11. (1) Every person who holds a licence shall have his name at length painted, in legible characters at least 5 centimetres deep, with the words “licensed pawnbroker” constantly and permanently remaining and plainly to be seen and read over the door of each shop or other place by him kept, or made use of, for carrying on the trade or business of a pawnbroker.

(2) Any such person who fails or neglects to comply with the provisions of this section shall for every such offence be liable to a penalty not exceeding \$20.

Production of licence

12. (1) Any person holding a licence shall, on demand at his licensed house or place wherein or whereat such licence is exercised, produce it to any officer of police.

(2) Any such person who refuses or neglects to produce his licence shall for every such refusal or neglect be liable to a penalty not exceeding \$20 unless he gives some reasonable excuse.

Entries to be made on taking pledge

13. (1) Every licensed pawnbroker taking in pawn any article whereon any money is to be lent shall, before advancing any money thereon, cause to be entered in a fair and legible manner in some book kept for that purpose—

- (a) a fair and reasonable description of such article;
- (b) the sum of money in the whole advanced thereon, with the rate of interest to be charged on the same by the week or month, as the case may be;
- (c) the true date at which such article is pawned; and
- (d) the name of the party by or for whom such article is pawned, and his place of residence, according to the statement of the person pawning,

SCHEDULE 2—continued

into which last-mentioned circumstances the pawnbroker shall inquire of the person pawning before any money is lent or advanced to him,

and, where a longer time for redemption than 3 months is agreed upon, the time so agreed upon.

(2) Every such entry as aforesaid shall be numbered consecutively throughout the year, the first pledge received by any pawnbroker on or after the first day of January in each year being numbered one, the second two, and so on progressively throughout the year.

(3) Any such pawnbroker who fails to comply with the provisions of this section shall, for every such offence, be liable to a penalty not exceeding \$20.

Duplicate to be given

14. (1) Every licensed pawnbroker, at the time of taking any article in pawn, shall give to the person pawning the same a duplicate of every such entry fairly and legibly written, or partly written and partly printed, with the signature of such pawnbroker thereto, containing every particular inserted in the original entry, and corresponding therewith in number.

(2) Any licensed pawnbroker who fails or neglects to comply with the provisions of sub-section (1) shall be liable to a penalty not exceeding \$20.

(3) No pawnbroker shall receive or retain any pledge unless such duplicate is accepted, at the time by the party pawning, and every such duplicate shall be delivered gratis, and shall be produced to the pawnbroker before he shall be obliged to redeliver the articles mentioned therein, or any of them.

Duplicates lost or stolen

15. If—

- (a) any pawnbroker's duplicate is lost or mislaid by, or fraudulently taken or obtained from, the owner thereof;
- (b) the articles mentioned therein remain unredeemed; and
- (c) the person representing himself to be such owner produces and leaves with the pawnbroker who gave such duplicate a written declaration in accordance with the form in the Schedule to the *Statutory Declarations Act 1959* of the Commonwealth, duly made as required by that Act, and setting forth the circumstances of such loss or otherwise satisfactorily accounting for the non-production of such duplicate,

SCHEDULE 2—continued

such pawnbroker shall, at the request of such person, deliver to him a copy of such duplicate.

Holders of duplicates to be deemed owners of goods pawned

16. (1) Every person who, at any time, produces any such duplicate as aforesaid to the pawnbroker who gave the same, and requires delivery of the articles therein specified, claiming to be the owner or representing himself to be authorized by the owner thereof, shall be deemed to be such owner or to be so authorized, and shall be entitled to redeem such articles accordingly unless—

- (a) such pawnbroker has notice from the real owner that such duplicate was lost by him or was fraudulently taken or obtained from him; or
- (b) such pawnbroker has been informed by some credible person that such articles were stolen.

(2) Whensoever any such pawnbroker refuses to deliver the articles to the party producing such duplicate, he shall immediately give information of such refusal and of the particular grounds thereof to an officer of police, together with a description of such party, or, if known to the pawnbroker, such party's name and place of residence.

Period for sale of pledges

17. (1) Unless a longer time is expressly agreed upon, the period during which any article taken in pawn may be redeemed shall be 3 months, at the expiration of which period, or at the expiration of any such longer period as has been so agreed upon, every such article shall be deemed forfeited, and may be sold.

(2) Any agreement for the forfeiture of any article before the expiration of 3 months shall be wholly void.

Selling before expiration of period

18. Any pawnbroker who, under any circumstances or upon any pretence, sells or otherwise disposes of, or causes or knowingly suffers to be sold or disposed of, any article so pawned before the expiration of the said term of 3 months, or of such longer period as was agreed upon, shall, for every such offence, be liable to a penalty not exceeding \$40 over and above any damages for which he is liable to the owner or party injured.

SCHEDULE 2—continued**Mode of sale**

19. (1) All article forfeited on which in the whole any sum above \$10 has been lent, shall be sold by public auction, and not otherwise.

(2) A notice of every such sale, containing a catalogue of all such articles and the time when the same were respectively taken in pawn, shall be twice inserted in some public newspaper, published in the Territory, 4 days at the least before the proposed day of sale.

(3) Any pawnbroker who offends against the provisions of this section shall forfeit to the owner of any articles sold contrary to the said provisions a sum not exceeding \$40.

Pawnbroker not to purchase

20. No purchase or pretended purchase by any pawnbroker or person on his behalf of any article pawned with him shall in any case be valid against the owner in any case.

Application of proceeds of sale

21. (1) If any article pawned is sold for more than the full amount of the principal money and interest thereon which was due at the time of such sale, then the surplus, deducting the necessary charges of such sale, shall, if claimed within 12 months next after such sale, be paid upon demand to the person by or for whom such article was pawned, or his agent or assigns, or in case of death, to his executor or administrator.

(2) Any pawnbroker who offends against the provisions of this section shall, for every such offence, be liable to a penalty not exceeding \$20.

Entry to be made of all articles sold

22. (1) Every pawnbroker shall, from time to time, enter in a book to be kept by him for that purpose a true and just account of the sale of every article which was pawned, and is sold or otherwise disposed of by him, specifying the date when such article was pledged and the true number of the entry then made thereof, and the name of the person who pledged the same and the day when and the amount for which every such article was sold.

(2) Any pawnbroker who offends against the provisions of this section shall for every such offence be liable to a penalty not exceeding \$20.

SCHEDULE 2—continued

Pawner may inspect entries

23. (1) Every person by or for whom any article was pawned shall, if such article is sold or otherwise disposed of, be permitted to inspect the entry of such sale.

(2) If such person produces the duplicate relating to the articles respecting which such inspection is required, and the pawnbroker or person employed by him refuses to permit such person to inspect any such entry or does not produce the book containing such entry, such pawnbroker or person employed by him shall for every such offence be liable to a penalty not exceeding \$20.

Pledges not to be taken from children or drunken persons

24. If any licensed pawnbroker or any agent or servant employed by any such pawnbroker at any time purchases, receives, or takes in pawn any article from any person apparently under the age of 14 years or apparently intoxicated with liquor, such pawnbroker shall, for every such offence, be liable to a penalty not exceeding \$20.

Pawnbroker not to advance, &c., anything but money

25. If any licensed pawnbroker, or any agent or servant employed by any such pawnbroker, in any case where the value of the pledge or the amount agreed to be lent thereon does not exceed \$20—

- (a) advances upon any articles pawned or offered in pawn anything but money; or
- (b) gives, sells, or exchanges in respect of any such article any goods or property in lieu of or in return for money,

such pawnbrokers shall for every such offence be liable to a penalty not exceeding \$20.

Days and hours when business may be carried on

26. (1) A licensed pawnbroker shall not—

- (a) receive or take in, or permit or suffer to be received or taken in, any goods or chattels by way of pawn, pledge or exchange; or
- (b) in any other way, exercise or carry on his trade or business of a pawnbroker,

SCHEDULE 2—continued

on any day, or at any time on any day, when the sale of goods at a shop is prohibited by virtue of any of the following paragraphs of the *Trading Hours Ordinance 1962*, that is to say, paragraphs 7 (2) (a) to (g) (inclusive).

(2) A pawnbroker who offends against the provisions of sub-section (1) shall, for every such offence, be liable to a penalty not exceeding \$20.

Persons attempting to redeem article when not entitled to do so may be apprehended

29. If any person not entitled nor having any colour of title by law to redeem any article in pledge or pawn attempts or endeavours to redeem the same, any pawnbroker with whom such article is in pledge, or the servant or agent of such pawnbroker, may seize and detain such person and deliver him immediately into the custody of any officer of police to be dealt with according to law.

PART IV—MISCELLANEOUS AND LEGAL PROCEDURE**Record evidence**

31. In any proceeding before the Court of Petty Sessions against any person alleged to be a licensed pawnbroker and liable as such to any such proceeding, the production of the alphabetical record hereinbefore mentioned shall be evidence both of the personal identity of the person therein named and that the said person is a licensed pawnbroker under this Act:

Provided always that any other proof as to the fact of any person holding any such licence may be admitted before the Court of Petty Sessions as it, in its discretion, sees fit.

Pawnbroker to be deemed unlicensed until contrary shown

32. In all proceedings under this Act against any person carrying on the trade or business of a pawnbroker without a licence, such person shall, for all purposes connected with such proceedings, be deemed to be unlicensed unless he produces the licence authorizing him to carry on such trade or business to the Court of Petty Sessions, or produces other proof which is satisfactory to that Court of his being a licensed pawnbroker within the meaning of this Act.

SCHEDULE 2—continued

Unlicensed persons keeping up signs, &c., liable to a penalty

33. Whosoever, not holding a licence, keeps up any sign, writing, painting, or other mark on or near to his house, shop, or premises which implies or gives reasonable cause to believe that such house, shop, or premises is or are the house, shop, or premises of a licensed pawnbroker shall for every such offence be liable to a penalty not exceeding \$20.

Lending licence

34. (1) Whosoever, having obtained a licence, lends it to any other person for the purpose of carrying on business as a pawnbroker under colour of such licence shall for every such offence be liable to a penalty not exceeding \$50.

(2) Where any person is convicted of an offence against the provisions of this section, the Court of Petty Sessions may declare his licence void, and such licence shall thereupon become void.

(3) Thereafter no licence shall be granted to any such person for 2 years from the date of such conviction.

Forged licences

35. Whosoever forges, counterfeits, or alters, or causes to be forged, counterfeited, or altered, any licence, or produces or shows any such forged, counterfeited, or altered licence to any person entitled to demand the production thereof, shall be guilty of an offence, and shall be liable to such punishment by fine or imprisonment for any term not exceeding 3 years, or by both fine and imprisonment as aforesaid, as the court thinks fit.

Forging, &c., duplicates

36. Whosoever—

- (a)** forges or alters, or causes to be forged or altered, or knowingly assists in forging or altering any such pawnbroker's duplicate, or utters, sells, disposes of, or puts off such duplicates so forged or altered, knowing the same to be so forged or altered, with intent to defraud any person whatsoever; or
- (b)** steals or unlawfully takes any such pawnbroker's duplicate with a fraudulent intent, to deprive the owner of the same, or of any article specified therein,

SCHEDULE 2—continued

shall be guilty of an offence, and shall be liable to such punishment by fine or imprisonment for any term not exceeding 2 years, or by both fine and imprisonment as aforesaid, as the court thinks fit.

Court may compel a pawnbroker to produce books, vouchers, &c.

37. (1) If, in the course of any proceedings whatsoever before a court, whether under this Act or otherwise, it appears to the court to be material or proper to require the production before it of any book, note, voucher, entry, memorandum, licence, or other paper required by this Act to be kept by, or which ought to be in the custody of, any pawnbroker, the court may summon such pawnbroker to attend before it and produce the same, and such pawnbroker is hereby required to produce every such book, duplicate, note, voucher, entry, memorandum, licence, or other paper before the court accordingly.

(2) Any pawnbroker who does not attend upon such summons or does not produce to the court any book, duplicate, or entry so required, or produces the same in an altered state, and does not show a reasonable excuse in that behalf to the court, shall, for every such offence, be liable to a penalty not exceeding \$20.

Court may order delivery of goods pawned on payment of compensation or otherwise

39. (1) The Court of Petty Sessions may order any article unlawfully pawned, pledged, or exchanged which is brought before it, and the ownership of which is established to the satisfaction of the Court, to be delivered up to the owner by the person with whom they were so unlawfully pawned, pledged, or exchanged either without compensation or with such compensation to the party in question as the Court deems fit.

Penalties

40. Any pawnbroker who offends against the provisions of this Act where no penalty in that behalf is by this Act specifically provided shall be liable to a penalty not exceeding \$40.

General issue

46. If any person is sued for any matter or thing done by him in the execution of this Act, he may plead the general issue and give the special matter in evidence.

SCHEDULE 2—continued
SCHEDULES

FIRST SCHEDULE

Section 6 (1)

Form of application for a pawnbroker's licence.

I, A.B. (*state the trade or occupation*), now residing at _____ do hereby give notice that it is my intention to apply to the Court of Petty Sessions, to be holden on the _____ day of _____ next, for a licence to carry on the trade or business of a pawnbroker in the premises, situated at _____ (*here describe the premises proposed to be licensed, specifying the situation of it, the person of whom rented, the present occupier, and whether now licensed*) and which I intend to keep as a pawnbroker's shop.

Given under my hand at _____ this _____ day of _____ one thousand nine hundred and _____

Form of householders' certificate to be appended to the above.

We, the undersigned householders, residing in the Australian Capital Territory, do hereby certify that the above A.B. _____ is a person of good fame and reputation, and fit and proper to be licensed to carry on the trade or business of a pawnbroker.

Witness our hands this _____ day of _____ one thousand nine hundred and _____

One _____

Two _____

Three _____

Four _____

Five _____

SCHEDULE 2—continued**SECOND SCHEDULE**

Section 6 (2)

PAWNBROKER'S LICENCE

Australian Capital Territory

to wit.

WHEREAS A.B. of _____ has applied to us the Court of Petty Sessions on this _____ day of _____ in the year 198 _____ for a licence to carry on the business of a pawnbroker in the premises now occupied by him, situated _____ :

Now the Court of Petty Sessions, having inquired into the character of the said A.B., and being satisfied that he is a fit person to have such licence granted to him, hereby authorizes and empowers him to carry on the trade or business of a pawnbroker, in the said premises, and not elsewhere, and this licence shall continue in force for the space of 12 months from the date hereof, and no longer.

Granted by the Court of Petty Sessions at _____ aforesaid
the _____ day of _____ one thousand nine
hundred and _____ .

(Signed) C.D. Magistrate.

Registered

A.B.

Clerk of the Court of Petty Sessions

NOTES

- (a) The Pawnbrokers Act 1902, in its application in the Territory, comprises the Pawnbrokers Act 1902 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Pawnbrokers Act 1902 in Part 2 of this Schedule.
- (b) Sections 2, 28, 30, 38 and 41 to 45, and the Third Schedule were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Section 26 and 27 were repealed and a new section 26 was substituted by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

PART 3

PIRACY PUNISHMENT ACT 1902 No. 69, 1902

An Act to consolidate the statutes relating to the punishment for piracy

Short title

1. This Act may be cited as the Piracy Punishment Act 1902.

Punishment where piracy accompanied by assault with intent to murder, &c.

4. Whosoever, with intent to commit, or at the time of, or immediately before, or immediately after, committing, the crime of piracy, in respect of any ship or vessel, assaults, with intent to murder, any person being on board of, or belonging to, such ship or vessel, or stabs, cuts, or wounds any such person, or unlawfully does any act by which the life of any such person may be endangered, shall be liable to imprisonment for life.

Punishment in other cases

5. Whosoever commits any offence which, by any of the Imperial Acts mentioned in the Schedule, amounts to the crime of piracy and is thereby made punishable with death, shall be liable to imprisonment for any term not exceeding 15 years.

Punishment of accessories

6. In the case of every offence punishable under this Act—
 - (a) every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and
 - (b) every accessory after the fact shall be liable to imprisonment for any term not exceeding 2 years.

Nothing herein to affect Acts regulating management of prisons

8. Nothing in this Act shall affect the provisions of any Act relating to the management and control of prisons.

SCHEDULE 2—continued**SCHEDULE****Section 5**

Reference to Act	Title
28 Hen. VIII, c.15.....	An Act for the punishment of pirates and robbers at sea.
11 & 12 W. III, c. 7.....	An Act for the more effectual suppression of piracy.
4 Geo. I, c. 2, s. 7.....	An Act for the further preventing robbery, burglarly, and other felonies; and for the more effectual transportation of felons and unlawful exporters of wool; and for declaring the law upon some points relating to pirates.
8 Geo. I, c 24	An Act for the more effectual suppressing of piracy.
18 Geo. II, c.30	An Act to amend an Act made in the eleventh year of the reign of King William the Third intituled an Act for the more effectual suppression of piracy.

NOTES

- (a) The Piracy Punishment Act 1902, in its application in the Territory, comprises the Piracy Punishment Act 1902 as amended by the *Crimes Ordinance 1968* and the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Piracy Punishment Act 1902 in Part 3 of this Schedule.
- (b) Sections 2, 3 and 7 were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Sections 4 and 6 were amended by section 19 of the *Crimes Ordinance 1968*. For the application of those amendments, see sub-section 20 (2) of that Ordinance.

SCHEDULE 2—continued

PART 4

PUBLIC GATES ACT 1901

No. 11, 1901

An Act to consolidate the enactments relating to Public Gates

Short title

1. This Act may be cited as the Public Gates Act 1901.

Interpretation

3. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Occupant” means any person in lawful possession of land;

“Public gate” means a gate permitted by the Minister, and erected under section 4;

“Public road” means any road lawfully used by or dedicated to the public.

Application to erect gate

4. (1) The occupant of any lands through which an unfenced public road passes, or the occupant or the several occupants of any lands separated by an unfenced public road, may apply to the Minister for permission to place a gate, of form and width to be specified in such application, across such road at any place where it intersects any fence enclosing or bounding any such lands.

(2) The Minister, if he approves of the proposed form, position, and width of the gate applied for, may publish in the *Commonwealth of Australian Gazette* and in some local newspaper notice of his intention to grant permission to the applicant to erect such gate, and may grant such permission.

(3) The applicant may, after the expiration of 1 month from the publication of such notice, erect a gate in accordance with his application, and shall paint and maintain on such gate in legible characters, not less than 75 millimetres in length, the words “public gate.”

(4) The Minister may upon 1 month’s notice revoke and cancel the permission granted for the erection of any such gate.

Penalty for leaving gate open

5. (1) Whosoever, having opened or passed through any public gate, fails immediately to close the same shall, on conviction, be liable to forfeit and pay the amount of the injury, if any, occasioned thereby, and in addition thereto,

SCHEDULE 2—continued

shall be liable to a penalty not exceeding \$10, and, if it is proved that the gate was opened for any other purpose than that of passage along the public road, or was wilfully left open, the offender shall, on conviction, be liable to forfeit and pay the amount of the said injury and, in addition thereto, shall be liable to a penalty not exceeding \$40.

(2) Whosoever breaks or injures such gate, or defaces, or attempts to deface the words painted thereon, shall, on conviction, forfeit and pay the amount of the injury, if any, occasioned thereby and, in addition thereto, shall be liable to a penalty not exceeding \$10.

(3) The amount of injury in any such case shall be ascertained and adjudged by the Court of Petty Sessions.

Penalty on occupant

6. Any occupant who—

- (a) places or causes to be placed the words “public gate” on any gate not authorized under this Act; or
- (b) in order to obtain the protection of this Act, permits the words “public gate” to remain on any gate not authorized by this Act,

shall on conviction be liable to a penalty not exceeding \$100.

Transitional provision

7. A permission duly granted under the Public Gates Act 1901, in its application in the Territory, before the date of commencement of the *New South Wales Acts Application Ordinance 1985*, being a permission that had not been revoked before that date, has effect, on and after that date, for the purposes of that Act in its application in the Territory, as if it had been granted on that date by the Minister for Territories of the Commonwealth under that Act, in its application in the Territory, as amended by that Ordinance.

NOTES

- (a) The Public Gates Act 1901, in its application in the Territory, comprises the Public Gates Act 1901 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Public Gates Act 1901 in Part 4 of this Schedule.

SCHEDULE 2—continued

- (b) Section 2 and the Schedule were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Section 7 was inserted by the *New South Wales Acts Application Ordinance 1985*.

PART 5

PUBLIC INSTRUCTION ACT 1880 43 Vic. No. 23

An Act to make more adequate provision for public education

Secular instruction

7. In all schools, the teaching shall be strictly non-sectarian but the words “secular instruction” shall be held to include general religious teaching as distinguished from dogmatical or polemical theology.

Hours for secular instruction

17. In every school, 4 hours during each school-day shall be devoted to secular instruction exclusively and a portion of each day, not more than 1 hour, shall be set apart when the children of any one religious persuasion may be instructed by the clergyman or other religious teacher of such persuasion but, in all cases, the pupils receiving such religious instruction shall be separated from the other pupils of the school. And the hour during which such religious instruction may be given shall be fixed by mutual agreement between the School Board in consultation with the principal of such school and the clergyman of the district or such other person as may be duly authorized to act in his stead and any class-room of a school may be used for such religious instruction by like agreement:

Provided that the religious instruction to be so given shall in every case be the religious instruction authorized by the Church to which the clergyman or other religious teacher may belong:

Provided further that in case of the non-attendance of any clergyman or religious teacher during any portion of the period agreed to be set apart for religious instruction such period shall be devoted to the ordinary secular instruction in such school.

SCHEDULE 2—continued**Objection to religious instruction**

18. Notwithstanding anything to the contrary in section 17, no pupil in a school shall be required to receive any general or special religious instruction if the parents or guardians of such pupil object to such religious instruction being given.

Interpretation of terms

39. In the construction and for the purposes of this Act, the following terms shall, if not inconsistent with the context or subject matter, have the respective meanings hereby assigned to them that is to say—

“Guardian” shall mean any person legally appointed as such or any person known to have habitual charge of a child;

“Principal”, in relation to a school, means the person occupying, or performing the duties of, the office of principal of the school;

“School” means a primary school, high school or secondary college conducted in the Territory by the Australian Capital Territory Schools Authority on behalf of the Commonwealth;

“School board”, in relation to a school, means the board established for the school under the *Schools Authority Ordinance 1976*.

Short title

40. This Act may be cited as the Public Instruction Act 1880.

NOTES

- (a) The Public Instruction Act 1880, in its application in the Territory, comprises the Public Instruction Act 1880 as amended before 1 January 1911 by the Free Education Act 1906 and as further amended after that date by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Public Instruction Act 1880 in Part 5 of this Schedule.
- (b) Sections 1 to 6, 8 to 16 and 19 to 38 and Schedule A were repealed by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

PART 6

PUBLIC ROADS ACT 1902 No. 95, 1902

An Act to consolidate the Acts relating to the opening, closing, survey, altering and improving of roads and the alignment and alteration of the alignment of streets in municipalities

Repeal, Savings and Interpretation

Short title

1. This Act may be cited as the Public Roads Act 1902.

Interpretation

6. In this Act, unless the context or subject-matter otherwise indicates or requires—

“Local newspaper” means a newspaper published or circulating in the Territory.

“Road”, wherever used in this Act, includes any land proclaimed, dedicated, resumed or otherwise provided before or after the passing of this Act, as a public thoroughfare or way and, wherever used in sections 18 to 20 (inclusive), also includes any land defined, reserved or left, before or after the passing of this Act, as a road in any subdivision of land of the Crown in right of the Commonwealth or the State of New South Wales or in the measurement or granting of any such land as indicated upon the official plans of the same.

Dedication of roads

Lands reserved as roads may be declared public roads

18. The Minister may, by notification in the *Commonwealth of Australia Gazette*, declare any road to be a public road and, thereupon, the road shall be dedicated to the public accordingly and shall be withdrawn from any lease or licence from the Commonwealth under which it was held and no compensation shall be payable in respect thereof.

Closing of unnecessary roads

Notices of intention to close unnecessary road

19. (1) If the Minister is of opinion that it is expedient to close any road or part thereof, notice to that effect shall be published in the *Commonwealth of*

SCHEDULE 2—continued

Australia Gazette and in some local newspaper and written notice to the like effect shall be posted by registered letter to the owners or occupiers of all lands having frontage to the road or part thereof (as the case may be) if their names and addresses are known.

(2) Such a notice shall call upon all persons interested to set forth, in writing addressed to the Minister, within 1 month from the date of the publication thereof, any objections which may appear to them to exist to the closing of the road or the part thereof.

Closing of unnecessary road

20. (1) After due consideration of all such objections (if any), the Minister may, after the expiration of the month, by notification in the *Commonwealth of Australia Gazette* close the aforesaid road.

(2) The lands comprised therein shall thereupon be freed and discharged from any rights of the public or any person to the same as a highway and shall become vested in the Commonwealth.

Remarking Roads**Minister may re-mark**

23. Whenever the position and boundaries of a road required for public traffic cannot be identified through the absence or loss of the survey marks, the Minister may cause the road to be re-marked.

Notice of re-marking of road to be published

25. (1) After the road has been re-marked as aforesaid, notice may be published in the *Commonwealth of Australia Gazette* and in some local newspaper setting forth generally the extent and direction of the road.

(2) Such notice shall—

- (a) refer to a plan of survey of the re-marking of the road;
- (b) state where the plan may be inspected;
- (c) state that it is intended, subject to consideration of any objections received, to approve the plan; and
- (d) call upon all persons interested to set forth, in writing, addressed to the Minister, within 1 month of the date of the notice, any objections they may have to the road as re-marked.

SCHEDULE 2—continued

(4) After due consideration of all such objections (if any), the Minister may, by notice in the *Commonwealth of Australia Gazette* after the expiration of the month, approve the plan either with or without alteration and the road as re-marked according to the plan so approved shall represent and be deemed to be the original road.

Protection to Crown

29. No suit or action shall be maintainable against the Commonwealth for injury or damage resulting from any alignment or alteration of alignment under this Act.

Gazette notices

Gazette notice conclusive evidence of due publication

35. (1) The production of a copy of the *Commonwealth of Australia Gazette* containing a notification purporting to be made under this Act shall, in all cases, be conclusive evidence of the due publication of the notification in accordance with the provisions of this Act and of the regularity of all proceedings relating thereto.

(2) The Minister may, by notification in the *Commonwealth of Australia Gazette*, limit, correct or alter the terms of any such notification as aforesaid and such limitation, correction or alteration shall, unless otherwise specified, relate back to the date of the original notification.

NOTES

- (a) The Public Roads Act 1902, in its application in the Territory, comprises the Public Roads Act 1902 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Public Roads Act 1902 in Part 6 of this Schedule.
- (b) Sections 2 to 5, 7 to 17, 21, 22, 24, 26 to 28, 30 to 34, 36 and the Schedule were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Sub-sections 18 (2), (3) and (4), 19 (3) and (4), 20 (3) and 25 (3) were omitted by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued**PART 7****REAL PROPERTY (LIMITATION OF ACTIONS) ACT 1837** Wm. IV, No. 3

An Act for adopting a certain Act of Parliament passed in the third and fourth years of the reign of His Majesty King William the Fourth and applying the same in the administration of justice in New South Wales in like manner as other laws of England are applied therein.

Preamble

Whereas a certain Act of Parliament was passed in the third and fourth years of the reign of His Majesty King William the Fourth intituled An Act for the limitation of Actions and Suits relating to Real Property and for simplifying the Remedies for trying the Rights thereto:

And whereas it is expedient to adopt and apply the said Act of Parliament in the administration of justice in New South Wales:

Be it therefore enacted, as follows:

Adopted and applied in the administration of justice

1. The said recited Act of Parliament, and every clause provision and enactment therein contained, shall be, and the same are and is hereby, adopted and directed to be applied in the administration of justice in the Territory in like manner as other Laws of England are therein applied.

Short title

2. This Act may be cited as the Real Property (Limitation of Actions) Act 1837.

NOTES

- (a) The Real Property (Limitation of Actions) Act 1837, being Act 8 Wm. IV, No. 3, in its application in the Territory, comprises the Real Property (Limitation of Actions) Act 1837 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Real Property (Limitation of Actions) Act 1837 in Part 7 of this Schedule.
- (b) The Act 8 Wm. IV, No. 3, did not contain a short title, but the short title “Real Property (Limitation of Actions) Act 1837” has been given

SCHEDULE 2—continued

to it by an amendment of section 2 made by the *New South Wales Acts Application Ordinance 1985*.

- (c) The Act 3 and 4 Wm. IV, c.27, which was adopted in New South Wales by the Real Property (Limitation of Actions) Act 1837 was printed in “The Public General Statutes of New South Wales (1824-1837)” as if it formed part of the latter Act. The text of the Act, as amended and in force in the Territory, is printed in Part I of Schedule 4 to the *New South Wales Acts Application Ordinance 1985*.

PART 8

SECOND-HAND DEALERS AND COLLECTORS ACT 1906 No. 30, 1906

An Act to provide for the licensing and regulation of second-hand dealers in and collectors of certain old wares; to regulate the sale of second-hand articles and old wares; and for other purposes

Short title

1. This Act may be cited as the Second-hand Dealers and Collectors Act 1906.

Interpretation

2. In this Act, unless inconsistent with the subject-matter or context, the following terms have the meanings hereinafter respectively assigned to them (that is to say)—

“Collector” means any person engaged in collecting old wares of any kind, whether on his own behalf or on behalf of an employer, for the purposes of sale or trade, but shall not include a person who buys old wares at a bona fide advertised auction sale conducted by a licensed auctioneer.

“Court” means the Court of Petty Sessions.

“Licence” means licence under this Act.

“Old wares” means partly manufactured metal goods, second-hand anchors, cables, sails, old junk, rags, bones, bottles, syphons, syphon tops, old copper, old iron, old brass, old lead, old muntz-metal, scrap metal, broken metal, defaced metal goods, old wearing apparel, old boots,

SCHEDULE 2—continued

second-hand furniture, second-hand tools, second-hand drapery goods, second-hand jewellery, and old stores of every description.

“Ship-chandler” means any shopkeeper whose principal business is the sale of cordage, canvas, and other furniture, and general necessities of ships.

“Second-hand dealer” means any person, other than a ship-chandler or ship-owner, who carries on the business of dealing in or buying and selling old wares of any kind, whether such person deals in any other goods or not.

“Truck” means truck, handcart, cart, barrow or vehicle of any kind whatsoever.

PART I—SECOND-HAND DEALERS**Dealers must be licensed**

3. Any person who carries on business as a second-hand dealer without being licensed so to do shall be guilty of an offence under this Act.

Application for dealer’s licence or transfer

4. A second-hand dealer’s licence, in the Form in the First Schedule, may be granted and issued, and a transfer thereof to any person or premises may be permitted, by the Court.

Such licence, unless sooner cancelled, shall remain in force for 1 year from the date on which it was issued, but may, on application to the Court, be renewed from year to year as the Court thinks fit. The sum of \$25 shall be paid for every such licence, and for every renewal thereof.

Notice of application for licence or transfer thereof

5. No second-hand dealer’s licence shall be granted or issued, nor shall any transfer thereof be permitted, unless the applicant therefor, 10 days at the least before his application, gives or sends by registered letter to the Clerk of the Court and to the Commissioner of Police, a notice in writing signed by him of his intention to apply for the same, setting forth his name and address and the place where his business is intended to be carried on. Such officer or any person authorized by him, may show cause against the granting of any such application.

SCHEDULE 2—continued

Proposed transferee to be applicant

6. Every application for permission to transfer a second-hand dealer's licence to any person shall be made by the proposed transferee.

Indorsement of permission to transfer

7. When the transfer of a second-hand dealer's licence to any person or premises is permitted, the fact and date of such permission, and the name and description of the person to whom, or description of the premises to which, the licence is permitted to be transferred, shall be indorsed upon such licence, and the person named as the transferee, or the premises described in such indorsement, shall thereupon and thenceforth for all purposes be deemed to be the person to whom or the premises in respect of which the licence was granted.

Name, &c., to be painted on outside of premises

8. If any licensed second-hand dealer does not—

- (1) cause to be painted and kept painted, his name in full, and the words "licensed dealer in old wares" upon some conspicuous part of the outside of the premises in respect of which his licence is granted in letters not less than 10 centimetres high;
- (2) enter in a book, in the form in the Second Schedule, the name of every person to whom he shall lend or let on hire, whether gratuitously or otherwise, any truck, and the date when and the period for which such truck was lent or let on hire, and the amount (if any) charged for such lending or hire;
- (3) keep a book, in the form of the Third Schedule, and enter correctly therein all particulars mentioned in that Schedule;
- (4) keep a book, in the form of the Fourth Schedule, and enter correctly therein all particulars mentioned in that Schedule;
- (5) produce to any member of the police force, whenever requested, the book or books by this Act required to be kept by him, and any old wares purchased or received by him then in his possession;
- (6) without delay, give notice to the officer on duty at the police station nearest to any place where he carries on business of any article which may come into his possession answering the description of any article described as having been stolen, embezzled, or fraudulently obtained, in any written or printed or verbal information given to him by any member of the police force;

SCHEDULE 2—continued

- (7) keep all old wares purchased or received by him, excepting old wares purchased from a licensed auctioneer, without changing the form in which they were when so purchased or received, and without disposing of the same in any way for a period of 5 days after such wares have been purchased or received; and
- (8) keep all old wares purchased or received by him from a licensed collector, other than bottles, separate and distinct from old wares purchased or received from any other person, and labeled with the name of the licensed collector from whom they were purchased or received, for a period of 5 days after the old wares were so purchased or received,

he shall be guilty of an offence under this Act.

Dealer to carry on business on licensed premises only**9.** If any licensed second-hand dealer—

- (1) carries on the business of a second-hand dealer upon any other premises than those to which his licence applies;
- (2) at any time, upon demand made to him, upon any part of the premises upon which he carries on the business of a second-hand dealer, by any member of the police force, refuses or, without reasonable excuse, fails to produce and show his licence in force at the time of such demand;
- (3) lends or lets on hire any truck to any person other than a licensed collector;
- (5) by himself or any other person on his behalf, purchases or receives any old wares from any person apparently under the age of 14 years; or
- (6) by himself or any other person on his behalf, carries on business before the hour of 7 o'clock in the morning,

he shall be guilty of an offence under this Act.

SCHEDULE 2—continued

PART II—COLLECTORS

Collectors to be licensed

10. (1) Any person carrying on the business of a collector and wishing to obtain a collector's licence shall deliver to the Clerk of the Court an application in the form contained in the Fifth Schedule, together with a certificate signed by an officer of police of or above the rank of sergeant in the form contained in the Fifth Schedule.

(2) Upon such application, the Court may issue a licence in the form of the Sixth Schedule: Provided always that no such licence shall be issued to any person under the age of 15 years.

(3) Such licence shall entitle the holder thereof to carry on the business of collector in all parts of the Territory, and, unless sooner cancelled, shall continue in force for 1 year from the date on which it was issued, but may, on a similar application and with a like certificate, be renewed from year to year as the Court thinks fit.

(4) There shall be payable in respect of every such licence, and of every annual renewal thereof, the fee of \$25.

Collector to leave address with police officer and report himself

11. If any collector shall not—

- (2)** whenever and so often as he changes his place of abode, notify by writing, signed by him, such change to the Commissioner of Police within 7 days after having so changed his abode;
- (3)** at any time, upon demand, produce his licence to any member of the police force, or to any person from whom he has within 24 hours previously bought or offered to buy, or collected or offered to collect, any old wares, without reasonable excuse; and
- (4)** unless he shall sooner sell the same to a licensed dealer, keep all old wares other than bottles purchased or received by him, or old wares purchased from a licensed auctioneer, in the same state and condition as they were in when so purchased or received for 4 days at least next after such purchase or receipt, or, if he sell the same within the said period, deliver the same to the licensed dealer purchasing the same in the same state and condition as when purchased or received,

he shall be guilty of an offence under this Act.

SCHEDULE 2—continued**Licences not to be let out****12.** If any collector—

- (1) lends or lets out on hire his licence to any person whomsoever, whether licensed or not;
- (2) sells, or otherwise disposes of, any old wares, other than bottles or drink cans, to any person other than a licensed second-hand dealer;
- (4) carries on his business of collecting old wares, or of buying or selling the same, before 7 o'clock in the morning, or after 6 o'clock at night;
- (5) uses any truck for the purposes of his business which shall not have painted or marked upon the near side of the truck, in such manner as to be clearly visible, the name in full and the address of the owner thereof, whether the collector using the truck shall be the owner or not, and the number of the collector's licence;
- (7) enters any premises without the permission of the owner or occupier thereof;
- (8) having entered upon any premises, with or without the permission of the owner or occupier thereof, neglects or refuses to immediately leave such premises when directed to do so by such owner or occupier or his servant or agent; or
- (9) uses insulting or offensive language, or is guilty of insulting behaviour, whilst in pursuit of his occupation as a collector in any place, whether private or public,

he shall be guilty of an offence under this Act.

On a second conviction for any offence against sub-section (1), the offender's licence shall be from thenceforth forfeited and void, and he shall be thenceforth incapable of holding a collector's licence.

Any person may, without warrant, arrest any offender against any of the provisions of sub-sections (7) and (8) and deliver him into the custody of any member of the police force, who shall then apprehend such offender and take him in due course before any court to be dealt with for his offence.

Collectors to be licensed**13.** If any person—

- (1) acts as a collector without being licensed so to do;

SCHEDULE 2—continued

- (2) hires or borrows or acts as a collector with or under colour of any licence issued to any other person, or of any license in which his own real name is not inserted as the name of the person to whom the same is granted; or
- (3) not being a licensed second-hand dealer, purchases or receives from any collector any old wares other than bottles or drink cans,

he shall be guilty of an offence under this Act.

PART III—MISCELLANEOUS

Ceasing to be licensed

14. Every person ceases to be licensed on the expiration, cancellation, or forfeiture of his licence.

Presumption that persons unlicensed

15. In any prosecution under this Act, any allegation in any information that any person is unlicensed need not be proved, and such person shall be deemed to be unlicensed until the contrary be proved by the production of a licence or otherwise.

Presumption of possession of old wares

16. Old wares shall be deemed to be in the possession of a second-hand dealer when they are placed in any house, outhouse, yard, garden, or place occupied by him, or have been removed with this knowledge and permission to any other place without a bona fida sale of such old wares having been made by him.

Entries in dealer's books deemed made by him

17. Every entry in any book kept by, or belonging to, any second-hand dealer, or found on his licensed premises, shall be deemed, unless the contrary be shown, to have been made by or with the authority of such dealer.

Licences may be revoked

18. The Court may, on the complaint of any person that any licensed person has been guilty of any violation of any of the provisions of this Act, or of any regulations, or that such person is in any other respect unfit to hold any licence, cancel such licence.

SCHEDULE 2—continued**Register to be kept**

19. The Clerk of the Court, shall enter particulars of any licence granted, permitted to be transferred or cancelled in a register to be kept in the office of the Court, and shall send copies of such entries to the Commissioner of Police.

Inspectors, &c., to visit dealers premises

20. Any officer of the police force above the rank of senior constable may, at any time by day or night, demand entrance into the place of business of any second-hand dealer, or the appurtenances thereof, and inspect the old wares and books of any such dealer therein, and may record in the books by this Act required to be kept the day and hour of his visit, and write his initials or name opposite the entry relating to any article examined by him.

If, after demand, admittance be refused or be delayed for such time as shall make it appear that wilful delay was intended, the offender shall be guilty of an offence under this Act, and such officer of the police force may break into such place of business or the appurtenances thereof.

Suspicious offering of old wares

22. In case any person who offers to any second-hand dealer, his servant, or agent, by way of sale or exchange, any old wares is unable or refuses to give a satisfactory account of himself or of the means by which he became possessed of such wares, or wilfully gives any false information to such dealer, or to his servant, or agent, as to whether such wares are his own property or not, or of his name or place of abode, or of the name and place of abode of the owner of the said wares, or if there is any other reason to suspect that such wares are stolen or otherwise illegally or clandestinely obtained, such dealer, or his servant, or agent, to whom such wares are so offered may seize and detain such person and the said wares, and deliver such person immediately into the custody of a constable or other police officer, who shall as soon as practicable convey such person and the said wares so offered before the Court; and if upon examination and inquiry, it appears to the satisfaction of the Court that the said wares were stolen or illegally or clandestinely obtained, such person shall be deemed guilty of an offence under this Act.

Proceedings

23. All proceedings against any person accused of an offence against this Act may be heard and determined in a summary manner by the Court, and any person convicted of such an offence shall be liable to a penalty not exceeding \$20.

SCHEDULE 2—continued
SCHEDULES

FIRST SCHEDULE Section 4
SECOND-HAND DEALERS AND COLLECTORS ACT 1906
Second-hand dealer's licence

Whereas A.B., of [*address and description*], has applied to us for a licence to act as a dealer: Now, the Court of Petty Sessions, being satisfied that the said A.B. is a fit person to have such licence granted to him, hereby authorizes and empowers him, the said A.B., to act as a second-hand dealer, and to carry on the business of dealing in, and buying and selling, old wares at the premises occupied by him in [*name of street and name of place*], and this licence shall (unless the same be sooner cancelled or forfeited) be and continue in force for one year from the date hereof. Granted at _____, the _____ day of _____, 19____.

Registered No. _____ (L.S.)

Clerk of the Court of Petty Sessions

SECOND SCHEDULE Section 8 (2)
SECOND-HAND DEALERS AND COLLECTORS ACT 1906
Entry of truck, handcarts, carts, or vehicles lent or let out on hire

Name of collector to whom truck, &c., lent or let on hire	Date on which truck, &c., lent or let on hire	Whether on hire or gratuitously: and if on hire, at what price	Period for which truck, &c., is lent or let	No. on trucks, &c., lent or let on hire

SCHEDULE 2—continued

THIRD SCHEDULE Section 8 (3)
SECOND-HAND DEALERS AND COLLECTORS ACT 1906
Entry of purchases and receipts

Day of purchase or receipt, and hour of day	Description of old wares purchases or received	Name and surname of person by or through whom purchased or received	Name and surname of person from whom purchased or received	Business and place of abode of person from whom purchased or received
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FOURTH SCHEDULE Section 8 (4)
SECOND-HAND DEALERS AND COLLECTORS ACT 1906
Entry of sales and dispositions

Day of sale	Description of old wares sold or disposed of	Name and surname of person by or through whom sold or disposed	Name and surname of person to whom sold or disposed of	Business and place of abode of person to whom sold or disposed of
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SCHEDULE 2—continued

FIFTH SCHEDULE Section 10
SECOND-HAND DEALERS AND COLLECTORS ACT 1906

Application for collector's licence

I, A.B. [*address and description*], do hereby declare that I am of the full age of 15 years, and apply for a collector's licence under the above Act; and I undertake, if the said licence be issued to me, to observe faithfully all the provisions of the said Act and the regulations made thereunder. Attached is the police certificate required by the said Act.

Dated the day of , 19 .

[*Signature of applicant*]

Police certificate in support of collector's licence

I, C.D. [*here state police rank*] hereby certify that the above-named [*name of applicant*] is a fit person to receive a collector's licence under the above-named Act.

Dated the day of , 19 .

[*Signature*]

SCHEDULE 2—continued

SIXTH SCHEDULE Section 10
SECOND-HAND DEALERS AND COLLECTORS ACT 1906
Collector's licence

A.B., of [address and description], is authorized and empowered to act as a collector, and to carry on the business of collecting old wares within all parts of the Australian Capital Territory; and this licence shall (unless the same be sooner cancelled or forfeited) be and continue in force for one year from the date thereof.

Granted at _____, this _____ day of _____, 19 ____.

Registered No. _____ (L.S.)

(Signed)

Clerk of the Court of Petty Sessions

This licence is not to be let on hire or lent to any person.

The collector, if he changes his abode, must report his new place of abode to the Commissioner of Police.

Specially notice—This licence is subject to cancellation or forfeiture if the collector be guilty of any breach of the Act or any regulation, or of any improper conduct whatever.

NOTES

- (a) The Second-hand Dealers and Collectors Act 1906, in its application in the Territory, comprises the Second-hand Dealers and Collectors Act 1906 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Second-hand Dealers and Collectors Act 1906 in Part 8 of this Schedule.
- (b) Sections 21 and 24 were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Sub-sections 9 (4), 11 (1), 12 (3), 12 (6) and 13 (4) were omitted by the *New South Wales Acts Application Ordinance 1985*.
- (d) Sub-section 8 (8) was inserted by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

PART 9

STOCK ACT 1901

No 27, 1901

An Act to consolidate the Acts relating to diseases in cattle and sheep, to imported stock, to the registration of brands, and to the exportation of cattle

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Stock Act, 1901.

PART VI—REGISTRATION OF BRANDS OF HORSES AND CATTLE

Division 1—Preliminary

Interpretation

168. In this Part, unless the context or subject-matter otherwise indicates or requires—

- “brand” means the impression of any letter, sign, or character branded on any horse or cattle;
- “cattle” includes any bull, cow, ox, heifer, steer or calf;
- “fees” means any fees, rates, or charges which any person may be liable to pay under this Part, or the regulations made in pursuance thereof;
- “horse” means any horse, mare, gelding, colt, filly, ass, or mule;
- “proprietor” means the registered proprietor of any brand;
- “register” means the register book containing a list of the brands of horses or cattle registered with the Registrar of Brands;
- “registrar” means the Registrar of Brands;
- “residence” means the residence, house, homestead, or head station of any proprietor;
- “run” means any run, station, farm, freehold, or leasehold where horses or cattle are kept or depastured.

SCHEDULE 2—continued***Division 2—Registrar of Brands*****Registrar of Brands**

170. (1) The person holding office as Controller of Stock under the *Stock Ordinance 1934* shall be the Registrar of Brands in the Territory.

(2) A person appointed to be the Acting Controller of Stock under the *Stock Ordinance 1934* has all the powers, and shall perform all the duties of Registrar of Brands during any period during which he is, under that Ordinance, authorized to exercise the powers, and required to perform the duties, of Controller of Stock.

Registers to be kept

171. (1) The registrar shall keep two registers, one for the registration of the brands of horses and another for the registration of the brands of cattle, and all brands registered with him shall be respectively entered therein, with the names and addresses of their proprietors.

(2) Such books shall be named and known respectively as the “horse register” and “cattle register” and shall be ruled, marked, and divided in the Forms A and B respectively contained in the Tenth Schedule.

Division 3—Brands**Only one brand to be used by same proprietor under penalty**

172. (1) The owner of any run, or of more runs than one if such runs are contiguous to each other, shall use only one and the same brand for horses and one and the same brand for cattle, respectively, on such run or runs.

(2) The owners of more runs than one, where such runs are not contiguous to each other, may use one and the same brand for the horses and one and the same brand for the cattle on each and every of such runs.

(3) If there are cattle or horses of more than one person upon the same run, a distinguishing brand may be used thereon, and registered in addition to the brand of the owner of the run.

(4) The owner of any run offending against the provisions of this section shall, for every such offence, be liable to a penalty not exceeding \$40.

Size of brand

173. (1) The brand for horses shall be not less than 50 millimetres in length, and for cattle not less than 75 millimetres in length; and where a brand

SCHEDULE 2—continued

consists of more letters, signs, or characters than one, such letters, signs, or characters shall be not less than 25 millimetres apart from each other.

(2) It shall not be incumbent upon any person to register any numerals as a brand or part of a brand.

(4) Any person failing to comply with any requirement of this section shall, for every such offence, be liable to a penalty not exceeding \$20.

Mode of branding

174. (1) All horses and cattle shall be branded upon the portions of the body indicated by the Eleventh and Twelfth Schedules; and each succeeding brand, other than upon the same portion of the body, shall be in the order therein stated.

(2) Every succeeding brand on the same portion shall be lower than and not less than 25 millimetres apart from the immediately preceding brand, and horses, and cattle shall be deemed to be branded with the particular brand which appears to be the last in order upon such horses and cattle, according to the order thereinbefore prescribed.

(3) any person failing to comply with any requirement of this section shall, for every such offence, be liable to a penalty not exceeding \$100.

Division 4—Registration of brands

Brands to be registered

175. (1) Every person who uses or intends to use a brand shall register the same with the registrar.

(2) Any person who uses, or attempts, directs, or permits to be used a brand not so registered, or who has in his possession any instrument commonly used for the making of any brand with intent to use the same, shall, for every such offence, be liable to a penalty not exceeding \$100.

Mode of registration, application

176. (1) Every person intending to register his brand shall forward to the registrar an application in the Form C contained in the Tenth Schedule, together with the authorized fees for the registration thereof.

(2) In every case where one person makes an application to register a brand and no other person makes an application to register a similar brand, the registrar shall cause the name and residence of the applicant, and a description

SCHEDULE 2—continued

of his brand, to be notified at least 3 times in the *Commonwealth of Australia Gazette*.

(3) If, within 2 months from the date for the first notification of such brand, no objection is made by any other person on account of his owning a similar brand to that notified as aforesaid, the brand so notified shall be deemed to be the brand of such applicant, and shall be registered accordingly.

(4) Where 2 or more applications as aforesaid by different persons are made to register similar brands, or where applications are made by persons to register brands similar to brands already registered, such applicants shall receive notice thereof from such registrar by registered letters addressed to them, and on receipt of such notices such applicants shall arrange a modification of their brands so as to distinguish them from each other, or from brands already registered (as the case may be), and shall, within 3 months after the date of the receipt by them of such notice, in like manner by registered letter, communicate to such registrar the modifications made by them, and upon the receipt by such registrar of such communications, he shall, after such notice, register their respective brands so modified by them.

(5) When no such modifications have been communicated to such registrar within the time hereinbefore specified, or when the brands so communicated are not so modified as to distinguish them from one another and from all brands applied to be registered or that may be already registered, he may make such additions to or alterations of such brands as he may deem necessary so to distinguish them, and shall give such applicants notice of such additions or alterations by registered letter addressed to them. And the brands so notified to such applicants shall be and be deemed to be their respective brands, and shall after such notice be registered accordingly.

Order of registration

177. (1) Every application for the registration of any brand shall be numbered and entered by the registrar of brands in the order in which it is received, and such registrar shall send to the person making such application a certificate of application in the Form D contained in the Tenth Schedule.

(2) Upon every such brand being duly registered as aforesaid, such registrar shall transmit to the proprietor thereof a certificate of registration in the Form E contained in the Tenth Schedule.

SCHEDULE 2—continued**Mode of transferring brands**

180. (1) When any brand which has been registered under this Part is intended to be transferred, the registered proprietor thereof, and the intending transferee, shall execute a joint memorandum in the Form G contained in the Tenth Schedule and on the receipt of such memorandum, duly executed as aforesaid, and of the authorized fees for such intended transfer, the registrar shall cancel the existing registration of such brand by the transferor, and shall register the same in the name of the transferee, and shall issue a certificate to him in the Form E contained in the Tenth Schedule, and such transferee shall thereupon be and be deemed to be the registered proprietor of such brand.

(2) Any person other than the proprietor thereof using any registered brand before the transfer of the same has been registered as hereinbefore provided, or otherwise neglecting or refusing to comply with any provision of this section, shall, for every such offence, be liable to a penalty not exceeding \$100.

Division 5—Miscellaneous**Entry of brand prima facie evidence of ownership**

181. On the trial of any person charged with horse or cattle stealing, the Attorney-General of the Commonwealth, or other officer prosecuting on behalf of the Crown, may prove that the brands appearing upon the animals alleged to have been stolen are the brands of the person charged on the information of the owner, or of some person through whom such alleged owner claims; and such evidence may, if in the opinion of the jury the other circumstances proved at the trial warrant such course, be taken into their consideration in determining the question of ownership.

Not to affect mortgages

187. Nothing herein contained shall affect any mortgage or other security under, or continued in operation by, the *Instruments Ordinance 1933*.

False entry, &c., to be deemed offence

188. Any person who—

- (a) knowingly and unlawfully inserts or causes or permits to be inserted any false entry of any matter relating to any brand in any register or certificate, or in any extract from any register or certificate; or
- (b) forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, with intent to defraud, any such register

SCHEDULE 2—continued

or certificate or any extract or entry therefrom, or that which purports to be such an extract or entry; or

- (c) wilfully and unlawfully destroys, defaces, injures, or alters, or causes to be destroyed, defaced, injured, or altered, any such brand register, certificate, extract or entry, or any part thereof with such intent; or
- (d) knowingly and willfully uses the brand of any proprietor without his authority with such intent; or
- (e) knowingly and willfully disfigures, alters, or defaces any registered brand branded upon any cattle or horses with such intent,

shall be guilty of any offence, and shall be liable to imprisonment for any period not exceeding 3 years.

Fees—how disposed of

189. All fees and moneys payable under this Part shall be according to the scale fixed by the Thirteenth Schedule.

Services of notices, &c.

191. Where, by any of the provisions of this Part, it may be necessary to give any notice, or send any document, to any person, such notice or document may be communicated or sent to such person by registered letter, or delivered to him personally, or left at this usual place of abode or business.

SCHEDULE 2—continued

TENTH SCHEDULE

FORM A

Section 171

STOCK ACT 1901

Horse brand register

No.	Date	Brand	Former Brand	Applicant		Date of publication in <i>Commonwealth of Australia Gazette</i>	Amount of registration fee	Remarks
				Name	Address			

FORM B

Section 171

STOCK ACT 1901

Cattle brand register

No.	Date	Brand	Former Brand	Applicant		Date of publication in <i>Commonwealth of Australia Gazette</i>	Amount of registration fee	Remarks
				Name	Address			

SCHEDULE 2—continued**FORM C****Section 176****STOCK ACT 1901***Application to register brand*

To the Registrar of Brands, Canberra

19 .

Sir,

I, enclose the authorized fees for the registration of the brand belonging to as mentioned in the Schedule of particulars given below, and have to request that you will register such brand accordingly.

Applicant

SCHEDULE ABOVE REFERRED TO

Brand to be Registered		Former brand		Applicant		No. of horses and cattle owned by applicant	Amount of fees
Horses	Cattle	Horses	Cattle	Name	Address		
							\$

I, _____, do hereby solemnly declare that the several matters and things contained in the above application are true to the best of my knowledge and belief.

(Applicant or Superintendent)

Declared before me at _____ this _____
day of _____, 19 .

J.P.

SCHEDULE 2—continued

FORM D
STOCK ACT 1901

Section 177

Certificate of application

No. .

This is to certify that an application, dated the , for the registration of the brand mentioned on the margin hereof has this day been received by me and numbered as above, from , with the sum of \$ as the authorized fees for the registration thereof in terms of the provisions of the abovenamed Act.

Registrar of Brands

FORM E
STOCK ACT 1901

Section 177 and 180

Certificate of registration

No. .

This is to certify that the brand mentioned on the margin hereof this day duly registered as the brand of , in terms of the provisions of the abovenamed Act.

Registrar of Brands

SCHEDULE 2—continuedFORM G
STOCK ACT 1901

Section 180

19 .

Memorandum of transfer

To the Registrar of Brands.

I [*or we*] _____ being the registered proprietor of the brand mentioned Horses
 on the margin hereof having transferred the same to _____, do
 hereby request that you will make the necessary transfer to _____ of
 such brand in your registers, and enclose herewith the sum of \$ _____ as the Cattle
 authorized fees for such transfer.

Proprietor.

Transferee.

ELEVENTH SCHEDULE

Section 174

Position and order of brands on horses

- | | | |
|--|---------|--|
| | Portion | I.— Embracing the near shoulder. |
| | Portion | II.— Embracing the off shoulder. |
| | Portion | III.— Embracing the near rump, hip, and thigh. |
| | Portion | IV.— Embracing the off rump, hip, and thigh. |
| | Portion | V.— Embracing the near ribs and saddle. |
| | Portion | VI.— Embracing the off ribs and saddle. |

TWELFTH SCHEDULE

Section 174

Position and order of brands on cattle

- | | | |
|--|---------|--|
| | Portion | I.— Embracing the near rump, hip and thigh. |
| | Portion | II.— Embracing the off rump, hip, and thigh. |
| | Portion | III.— Embracing the near back and ribs. |
| | Portion | IV.— Embracing the off back and ribs. |

SCHEDULE 2—continued

Portion	V.— Embracing the near shoulder.
Portion	VI.— Embracing the off shoulder.
Portion	VII.— Embracing the near loin.
Portion	VIII.— Embracing the off loin.

THIRTEENTH SCHEDULE

Section 189

Scale of fees and rates

For registering a brand for cattle where the applicant is the proprietor of:—

	\$
20 cattle or less	0.50
More than 20 but not less than 100 cattle.....	1.00
More than 100 but not more than 500 cattle.....	1.50
More than 500 but not more than 1000 cattle.....	2.00
More than 1000 but not more than 3000 cattle.....	2.50
More than 3000 but not more than 4000 cattle.....	3.00
More than 4000 but not more than 6000 cattle.....	3.50
More than 6000.....	4.00

For registering a brand for horses, where the applicant is the proprietor of:—

	\$
10 horses or less.....	0.50
More than 10 but not more than 20 horses	1.00
More than 20 but not more than 50 horses	1.50
More than 50 but not more than 100 horses	2.00
More than 100 but not more than 200 horses	2.50

SCHEDULE 2—continued

More than 200 but not more than 400 horses	3.00
More than 400 but not more than 600 horses	3.50
More than 600 horses	4.00

NOTES

- (a) The Stock Act 1901, in its application in the Territory, comprises the Stock Act 1901 as amended before 1 January 1911 by the Pastures Protection Act, 1902 and as further amended after that date by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Stock Act 1901 in Part 9 of this Schedule.
- (b) Section 2 and the First Schedule were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (c) Part II (comprising sections 8 to 17), Part III (comprising sections 18 to 142) and the Second, Third, Fourth, Fifth, Sixth and Seventh Schedules were repealed by the Pastures Protection Act, 1902.
- (d) Part IV (comprising sections 143 to 160), and Part V (comprising sections 161 to 167) and the Eighth and Ninth Schedules were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (e) Section 169, 178, 179, 183, 184, 185, 186, 190 and 192 were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (f) Section 170 was substituted by the *New South Wales Acts Application Ordinance 1985*.
- (g) Sub-section 173 (3) and Form H in the Tenth Schedule were omitted by the *New South Wales Acts Application Ordinance 1985*.
- (h) *See, also, the Stock Ordinance 1934 and the Stock Diseases Ordinance 1933.*

SCHEDULE 2—continued

PART 10

SUPREME COURT ACT 1841

5 Vic. No. 9

An act for the further amendment of the law and for the better advancement of justice

Short title

1. This Act may be cited as the *Supreme Court Act 1841*.

Limitation of certain actions of debt, &c.

39. All actions of debt for rent upon any indenture of demise, all actions of covenant or debt upon any bond or other specialty, all actions of debt or *scire facias* upon any recognizance, all actions of debt upon any award where the submission is not by specialty or for money levied under any *fieri facias* and all actions for penalties, damages or sums given to the party grieved by any law in force in the Territory shall be commenced and sued within the time and limitation hereinafter expressed but not afterwards, that is to say, the said actions of debt for rent or covenant, debt upon any bond or other specialty and actions of debt of *scire facias* upon recognizance, within 20 years after the cause of such actions, the said actions by the party grieved, within 2 years after the cause of such actions, and the said other actions, within 6 years after the cause of such actions. Provided that nothing herein contained shall extend to any actions given by any law of the Territory where the time for bringing such action is or shall be thereby specially limited.

Infants, &c.

40. If any person entitled to any such action or *scire facias* shall be, at the time the cause of action accrued, under the age of 18 years or *non compos mentis*, then such person shall be at liberty to commence the same action within such times after attaining that age or becoming of sound memory as other persons having no such impediment should have done.

Proviso as to acknowledgments

41. Provided always that, if any acknowledgment shall have been made, either by writing signed by the party liable under any such indenture, specialty or recognizance or his agent or by part payment or satisfaction on account of the principal or interest due thereon, it shall be lawful for the person entitled to such actions to bring his action for the money remaining unpaid and so acknowledged within 20 years after such acknowledgement on part payment or

SCHEDULE 2—continued

satisfaction or, in case any person entitled to such action shall at the time of such acknowledgement be under disability as aforesaid, then within 20 years after such disability shall have ceased and, in answer to a plea of this Act, the plaintiff in any such action may reply such acknowledgment and that such action was brought within such time as aforesaid.

NOTES

- (a) The Supreme Court Act 1841 (Act 5 Vic. No. 9), in its application in the Territory, comprises the Supreme Court Act 1841 as amended before 1 January 1911 by the following Acts, namely—

Act 12 Vic. No. 1

Act 44 Vic. No. 18

Bankruptcy Act, 1887

Evidence Act, 1898

Landlord and Tenant Act of 1899

Common Law Procedure Act, 1899

Witnesses Examination Act, 1900

Supreme Court and Circuit Courts Act, 1900

Judgment Creditors' Remedies Act, 1901

Equity Act, 1901

General Legal Procedure Act, 1902,

And, since that date, by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Supreme Court Act 1841 in Part 10 of this Schedule.

- (b) Sections 1 to 29, 31 to 38, 42 and 43 were repealed in New South Wales before 1 January 1911.
- (c) Act 5 Vic. No. 9 did not contain a short title, but the short title "Supreme Court Act 1841" was given to it by a new section 1 inserted by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

- (d) Section 30 was repealed by the *New South Wales Acts Application Ordinance 1985*.

PART 11

TRUCK ACT 1900

No. 55, 1900

An Act to regulate contracts made with respect to, and the payment of, wages; to prohibit such payment being made in goods or otherwise than in money; and to regulate the service of legal process

Wages to be payable in money

1. (1) In every contract hereafter made with any workman, the wages of such workman shall be made payable in money only, and not otherwise; and if by agreement, custom, or otherwise, a workman is entitled to receive, in anticipation of the regular period of the payment of his wages, an advance as part, or on account, thereof, it shall no be lawful for the employer to withhold such advance, or make any deduction in respect of such advance, on account of poundage, discount or interest, or any similar charge.

(2) If, in any such contract, the whole, or any part, of such wages shall be made payable in any manner other than in money, or shall provide for any deduction or charge as aforesaid in respect of any advance of the whole, or part, of the wages of such workman, such contract shall be, and is hereby declared, illegal and void in so far as any promise or consideration made or given by, or arising out of, such contract relates to the payment of such wages otherwise than in money, or as to making any such deduction or charge as aforesaid; and such promise or consideration shall be deemed to be severable from the other part of the contract, which shall otherwise be and remain in force.

No contract to stipulate as to mode of spending wages

2. No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any workman, any terms as to the place where, the manner in which or the person with whom any wages, or portion of wages, paid to the workman are or is to be expended, or any terms requiring him to reside upon the lands of such employer; and no employer shall, by himself or his agent, dismiss any workman from his employment on account of the place where, the manner in which or the person with whom any wages, or portion of wages, paid by the employer to such

SCHEDULE 2—continued

workman were or was expended, or were or was not expended, or on account of the workman not residing upon the lands of the employer.

All wages to be paid in money

3. The entire amount of the wages earned by, or payable to, any workman shall be actually paid to such workman in money, and not otherwise, at intervals of not more than 14 days, if demanded, any contract to the contrary notwithstanding; and every payment made to any such workman by his employer of, or in respect of, any such wages by the delivering to him of goods, or otherwise than in money, except as hereinafter mentioned, shall be, and is hereby declared, illegal and void; and every workman shall be entitled to recover from his employer, in any court of competent jurisdiction, the whole, or so much, of the wages earned by such workman as shall not have been actually paid to him by his employer in money.

No set-off to be allowed for goods supplied to workman by employer

4. In any action brought or commenced by any workman against his employer for the recovery of any sum of money due to such workman as his wages—

- (1) the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason, or in respect, of any goods had or received by the plaintiff as or on account of his wages, or by reason, or in respect, of any goods sold, delivered or supplied at any shop, store, house, or premises kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest; and
- (2) the defendant shall not be entitled to any set-off in respect of any goods supplied to the plaintiff by any person under any order or direction of the defendant or his agent.

Employer not to have action for goods supplied to workman

5. No employer shall have, or be entitled to maintain, any action in any court against any workman for, or in respect of, any goods sold, delivered or supplied to any such workman by any such employer whilst in his employment as, or on account of, his wages, or for, or in respect of, any goods sold, delivered or supplied to such workman at any shop, store, house, or premises kept by, or belonging to, such employer, or in the profits of which such employer shall have any share or interest.

SCHEDULE 2—continued

No deduction from wages for sharpening or repairing tools, except by agreement

6. No deduction shall be made from the wages of a workman for sharpening or repairing tools, except by agreement.

Payment of wages may be made by cheque

7. Nothing contained in this Act shall be construed to prohibit the making of, or render invalid, any contract for the payment, or any actual payment, to any workman of the whole or any part of his wages in a cheque or draft, payable to the bearer on demand and drawn upon any bank carrying on business in the Territory or in an order in writing for the payment of money to the bearer on demand drawn upon any person, company or association carrying on business in the Territory, other than a retail shopkeeper, or publican, if such workman shall freely consent to receive such cheque, draft, or order, but all payments so made with such consent, shall, for the purposes of this Act, be as valid as if made in money: provided that if wages shall be paid to any workman by a cheque, draft, or order in writing as aforesaid, and the same shall be dishonoured, such workman shall be entitled to recover from his employer, in addition to any wages due or payable to any such workman, such reasonable damages as he may have sustained in consequence of the dishonour of such cheque, draft, or order in writing, and such damages shall be recoverable in any court of competent jurisdiction.

Service of legal process

8. Service of any legal process for, or incidental to, the recovery of wages, or damages for non-payment thereof, or with respect to the dishonour of any cheque, draft, or order given in respect of such wages, may be effected on the employer by leaving such process with, or delivering the same to, the manager or overseer for the time being of the works at, or in respect of which, such wages shall have been earned. This section shall not affect any other mode of service allowed by law.

Penalties for breaches of Act

9. If the employer of any workman shall, by himself or the agency of any other person or persons, directly or indirectly enter into any contract, or make any payment, hereby declared to be illegal and void, wholly or in part, or if the employer or his agent contravenes, or fails to comply with, any of the foregoing provisions of this Act, such employer or agent, as the case may be, shall be deemed guilty of an offence, and be liable to the following penalties:—For the

SCHEDULE 2—continued

first offence, a penalty not exceeding \$20; for the second offence, a penalty not exceeding \$50; for any subsequent offence, a penalty not exceeding \$100.

Cases to which this Act does not apply

10. This Act shall not extend or apply—

- (1) where an employer or his agent supplies or contracts to supply, to any workman any medicine or medical attendance, or any fuel, materials, tools, appliances, or implements to be, by any such workman, employed in his trade, labour or occupation;
- (2) where an employer or his agent supplies, or contracts to supply, to any workman who has engaged with him to fell bush, to ringbark trees or to clear land of bush the necessary outfit and means of support and materials or tools requisite for commencing his engagement, to any amount, not exceeding, in any case, the amount of 2 months, wages to be earned by such workman in such engagement;
- (3) where such employer or his agent supplies, or contracts to supply, to any workman any hay, corn or other provender to be consumed by any horse or other beast of burden employed by any such workman in his trade, labour or occupation;
- (4) where such employer or his agent allows such workman the use of a tenement as part of his wages, or in addition to his wages, or any other allowance or privilege in addition to money wages as a remuneration for his services;
- (5) to prevent any employer from advancing any money for the relief of such workman or his wife or family in sickness, or from advancing any money to any member of the family of such workman by his order, not from deducting or contracting to deduct any such sum or sums of money as aforesaid from the wages of such workman;
- (6) to seamen or domestic servants or to persons employed in or in connection with agricultural or pastoral pursuits;

Provided that no deduction, or stoppage of wages, shall exceed the amount of money advanced, or the value of any fuel, tools, implements, hay, corn, provender, victuals, drink or materials supplied to such workman.

Definitions

12. In this Act, unless inconsistent with the context, the words—

SCHEDULE 2—continued

- “Contract” includes any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, direct or indirect, to which the employer and workman are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them.
- “Employer” includes any master, manager, foreman, clerk, or other person engaged in the hiring, employment or superintendence of the service, work or labour of any workman within the meaning of this Act.
- “Money” means currency of Australia provided for by the *Currency Act 1965* of the Commonwealth, Australian notes within the meaning of Part V of the *Reserve Bank Act 1959* of the Commonwealth or postal orders issued by the Australian Postal Commission.
- “Wages” includes any money or thing had, or contracted to be paid, delivered or given, as a recompense, reward or remuneration for any service, work or labour done, or to be done, whether within a certain time, to a certain amount or for a time or amount uncertain.
- “Workman” means any person in any manner employed in work of any kind or in manual labour, whether under the age of 21 years or above that age.

Short title

- 13.** This Act may be cited as the Truck Act 1900.

NOTES

- (a) The Truck Act 1900, in its application in the Territory, comprises the Truck Act 1900 as amended before 1 January 1911 by the Truck Act Amendment Act of 1901 and as further amended after that date by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Truck Act 1900 in Part 11 of this Schedule.
- (b) The words inserted in sub-section 10 (1) by the Truck Act Amendment Act of 1901 were omitted by the *New South Wales Acts Application Ordinance 1985*.
- (c) Section 11 was repealed by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

- (d) The definition of “Money” in section 12 was substituted by the *New South Wales Acts Application Ordinance 1985*.

PART 12**TRUST PROPERTY ACT 1862**

26 Vic. No. 12

An Act to amend the law of property and further to relieve trustees

Extended limits for recovering mortgaged land

24. Notwithstanding anything contained in the Imperial Act for the limitation of actions and suits relating to real property which applies in the Territory by virtue of the Real Property (Limitation of Actions) Act 1837 in its application in the Territory, it shall be lawful for any person entitled to or claiming under any mortgage of land, being land within the definition contained in section 1 of the said Imperial Act, to make an entry or bring an action to recover such land at any time within 20 years next after the last payment of any part of the principal money or interest secured by such mortgage although more than 20 years may have elapsed since the time at which the right to make such entry or bring such action shall have first accrued.

Extended time in cases of claims to estates of intestates

36. No suit or other proceeding shall be brought to recover the personal estate, or any share of the personal estate, of any person dying interstate possessed by the legal personal representative of such intestate but within 20 years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same unless, in the meantime, some part of such estate or share, or some interest in respect thereof, shall have been accounted for or paid, or some acknowledgement of the right thereto, shall have been given in writing signed by the person accountable for the same or his agent, to the person entitled thereto or his agent and, in such case, no such action or suit shall be brought but within 20 years after such accounting, payment or acknowledgment, or the last of such accountings, payments or acknowledgements if more than one was made or given.

Short title

71. This Act may be cited as the Trust Property Act 1862.

SCHEDULE 2—continued

NOTES

- (a) The Trust Property Act 1862, in its application in the Territory, comprises the Trust Property Act 1862 as amended before 1 January 1911 by the following Acts—

Act 44 Vic. No. 18

Trustee Act, 1898

Wills, Probate and Administration Act, 1898

Conveyancing and Law of Property Act, 1898

Landlord and Tenant Act of 1899

Inheritance Act of 1901

Equity Act, 1901

And as further amended after that date by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Trust Property Act 1862 in Part 12 of this Schedule.

- (b) Sections 1 to 23, 25 to 35 and 37 to 70 were repealed before 1 January 1911.
- (c) The recitals to section 36 and the enacting words in that section were omitted by the *New South Wales Acts Application Ordinance 1985*.

PART 13

WRITTEN MEMORANDUM ACT 1834 4 Wm. IV No. 17

An Act for adopting and applying a certain Act of Parliament for rendering a written memorandum necessary to the validity of certain promises and engagements.

Preamble

WHEREAS a certain Act of Parliament was passed in the ninth year of the reign of His late Majesty King George the Fourth intituled An Act for rendering a written memorandum necessary to the validity of certain promises and engagements:

SCHEDULE 2—continued

Be it therefore enacted, as follows:

Adopted and directed to be applied in the administration of justice

1. Sections 1, 3 and 4 of the said recited Act of Parliament shall be and the same are hereby adopted and directed to be applied in the administration of justice in the Territory in like manner as other laws of England are therein applied and as if the same and every part thereof had been repeated and re-enacted in this Act.

Short title

2. This Act may be cited as the Written Memorandum Act 1834.

NOTES

- (a) The Written Memorandum Act 1834 (being Act 4 Wm. IV No. 17), in its application in the Territory, comprises the Written Memorandum Act 1834, as affected, before 1 January 1911, by the General Legal Procedure Act, 1902 and the usury, Bills of Lading, and Written Memorandum Act, 1902 and as amended, after that date, by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Written Memorandum Act 1834 in Part 13 of this Schedule.
- (b) The operation of the Written Memorandum Act 1834, in New South Wales was affected before 1 January 1911 by the General Legal Procedure Act, 1902 and the Usury, Bills of Lading, and Written Memorandum Act 1834 but those Acts affected its operation to the extent that, after those Acts came into operation, sections 1, 3 and 4 only, of Imperial Act 9 Geo. IV, c.14 remained in force as law of New South Wales by virtue of the Written Memorandum Act 1834. Section 1 of the Written Memorandum Act 1834 has been expressly amended by the *New South Wales Act Application Ordinance 1985* so that it adopts as law of the Territory only the provisions of sections 1, 3 and 4 of the Imperial Act 9 Geo. IV, c.14.
- (c) The text of Act 9 Geo. IV c.14, adopted by the Written Memorandum Act 1834 (being the text as amended and in force in the Territory) is set out in Part 2 of Schedule 4 to the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 2—continued

- (d) Act 4 Wm. IV No. 17 did not contain a short title, but the short title “Written Memorandum Act 1834” has been given to it by the addition of section 2 by the *New South Wales Acts Application Ordinance 1985*.

SCHEDULE 3

Section 5 and
Sub-section 10 (2)

ADMINISTRATION OF IMPERIAL ACTS THAT ARE AMENDED BY
THIS ORDINANCE

Column 1	Column 2	Column 3
Short title of Imperial Act	Short title of New South Wales Act by virtue of which Imperial Act applies	Minister by whom Imperial Act administered
Real Property (Limitation of Actions) Act (Imperial) 1833	Real Property (Limitations of Actions) Act 1837	Attorney-General
Written Memorandum Act (Imperial) 1828	Written Memorandum Act 1834	Attorney-General

SCHEDULE 4

Section 5

PART 1

REAL PROPERTY (LIMITATIONS OF ACTIONS) 3 and 4 Wm. IV. ACT (IMPERIAL) 1833 c.27

An Act for the limitation of actions and suits relating to real property and for simplifying the remedies for trying the rights thereto

Meaning of the words in the Act

1. The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall, in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows (that is to say):

the word “Land” shall extend to manors, messuages and all other corporeal hereditaments whatsoever and also to tithes (other than tithes (other than tithes, belonging to a spiritual or eleemosynary corporation sole) and also to any share estate or interest in them or any of them whether the same shall be a freehold or chattel interest and whether freehold or copyhold or held according to any other tenure;

the word “Rent” shall extend to all heriots and to all services and suits for which a distress may be made and to all annuities and periodical sums of money charged upon or payable out of any land (except moduses or compositions belonging to a spiritual or eleemosynary corporation sole); the person through whom another person is said to claim shall mean any person by, through or under, or by the act of, whom the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor special or general occupant, tail, tenant by the courtesy of England, tenant in dower, successor special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee or otherwise and also any person who was entitled to an estate or interest to which the person so claiming or some person through whom he claims became entitled as lord by escheat;

SCHEDULE 4—continued

the word “Person” shall extend to a body politic corporate or collegiate and to a class of creditors or other persons as well as an individual;

every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing;

every word importing the masculine gender only shall extend and be applied to a female as well as a male.

No land or rent to be recovered but within 20 years after the right of action accrued to the claimant or some person whose estate he claims

2. No person shall make an entry or distress or bring an action to recover any land or rent but within 20 years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to some person through whom he claims or if such right shall not have accrued to any person through whom he claims then within 20 years next after the time at which the right to make such entry or distress or to bring such action shall have first accrued to the person making or bringing the same.

When the right shall be deemed to have accrued

3. In the construction of this Act, the right to make an entry or distress or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned (that is to say) when the person claiming such land or rent or some person through whom he claims shall in respect of the estate or interest, claimed have been in possession or in receipt of the profits of such land or in receipt of such rent and shall while entitled thereto have been dispossessed or have discontinued such possession or receipt then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits or rent were also received and when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt then such right shall be deemed to have first accrued at the time of such death and when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted appointed or otherwise assured by any instrument (other than a will) to him or some person through whom he claims by a person being in respect of the same estate or interest in the possession or receipt of the profits of the land or in the receipt of the rent and no person entitled under such instrument shall have been in such possession or receipt then such right shall be

SCHEDULE 4—continued

deemed to have first accrued at the time at which the person claiming as aforesaid or the person through whom he claims became entitled to such possession or receipt by virtue of such instrument and when the estate or interest claimed shall have been an estate or interest in reversion or remainder or other future estate or interest and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession and when the person claiming such land or rent or the person through whom he claims shall have become entitled by reason of any forfeiture or breach of condition then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken.

Where advantage of forfeiture is not taken by remainder-man he shall have a new right when his estate come into possession

4. When any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession or as if no such forfeiture or breach of condition had happened.

Reversioner to have a new right

5. A right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued in respect of an estate or interest in reversion at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held or the profits thereof or such rents shall have been received notwithstanding the person claiming such land or some person through whom he claims shall at any time previously to the creation of the estate or estates which shall have determined have been in possession or receipt of the profits of such land or in receipt of such rent.

SCHEDULE 4—continued

An administrator to claim as if he obtained the estate without interval after death of deceased

6. For the purposes of this Act an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

In the case of a tenant-at-will the right shall be deemed to have accrued at the end of one year

7. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant-at-will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of 1 year next after the commencement of such tenancy at which time such tenancy shall be deemed to have determined: Provided always that no mortgagor or cestuique-trust shall be deemed to be a tenant-at-will within the meaning of this clause to his mortgagee or trustee.

No person after a tenancy from year to year to have any right but from the end of the first year or last payment of rent

8. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent as tenant from year to year or other period without a lease in writing, the right of the person entitled subject thereto or of the person through whom he claims, to make an entry or distress or to bring an action to recover such land or rent shall be deemed to have first accrued at the determination of the first of such years or other periods or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen).

Where rent amounting to \$2 reserved by a lease in writing shall have been wrongfully received no right to accrue on the determination of the lease

9. When any person shall be in possession or in receipt of the profits of any land or in receipt of any rent by virtue of a lease in writing by which a rent amounting to the yearly sum of \$2 or upwards shall be reserved and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully

SCHEDULE 4—continued

entitled thereto, the right of the person entitled to such land or rent subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

A mere entry not to be deemed possession

10. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon.

No right to be preserved by continual claim

11. No continual or other claim upon or near any land shall preserve any right of making an entry or distress or of bringing an action.

Possession of one co-parcener, &c., not to be the possession of the others

12. When any one or more of several persons entitled to any land or rent as co-parceners, joint-tenants or tenants-in-common shall have been in possession or receipt of the entirety or more than his or their undivided share or shares of such land or of the profits thereof or of such rent for his or their own benefit or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.

Possession of a younger brother not to be the possession of heir

13. When a younger brother or other relation of the person entitled as heir to the possession or receipt of the profits of any land or to the receipt of any rent shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir.

Acknowledgment in writing given to the person entitled or his agent to be equivalent to possession or receipt of rent

14. When any acknowledgement of the title of the person entitled to any land or rent shall have been given to him or his agent in writing signed by the person in possession or in receipt of the profits of such land or in receipt of such rent, then such possession or receipt of or by the person by whom such

SCHEDULE 4—continued

acknowledgment shall have been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last-mentioned person or any person claiming through him to make any entry or distress or bring an action to recover such land or rent shall be deemed to have first accrued at, and not before, the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.

Persons under disability of infancy or lunacy, and their representatives to be allowed ten years from the termination of their disability or death

16. If, at the time at which the right of any person to make an entry or distress or bring an action to recover any land or rent shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned (that is to say) infancy, idiocy, lunacy or, unsoundness of mind then such person, or the person claiming through him, may, notwithstanding the period of 20 years hereinbefore limited shall have expired, make an entry or distress, or bring an action to recover such land or rent, at any time within 10 years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability or shall have died (which shall have first happened).

But no action, &c., shall be brought beyond 40 years after the right of action accrued

17. No entry, distress or action shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned or by any person claiming through him but within 40 years next after the time at which such right shall have first accrued although the person under disability at such time may have remained under one or more of such disabilities during the whole of such 40 years or although the term of 10 years from the time at which he shall have ceased to be under any such disability or have died shall not have expired.

No further time to be allowed for a succession of disabilities

18. When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress or to bring an action to recover such land or rent beyond the

SCHEDULE 4—continued

said period of 20 years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued or the said period of 10 years next after the time at which such person shall have died shall be allowed by reason of any disability of any other person.

When the right to an estate in possession is barred the right of the same person to future estates shall also be barred

20. When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited which shall be applicable in such case and such person shall, at any time during the said period, have been entitled to any other estate, interest, right or possibility in reversion remainder or otherwise in or to the same land or rent no entry, distress or action shall be made or brought by such person or any person claiming through him to recover such land or rent in respect of such other estate, interest, right or possibility unless, in the meantime, such land or rent shall have been recovered by some person entitled to an estate, interest or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession.

Where tenant-in-tail is barred remainder-men whom he might have barred shall not recover

21. When the right of a tenant-in-tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited which shall be applicable in such case, no such entry distress or action shall be made or brought by any person claiming any estate interest or right which such tenant-in-tail might lawfully have barred.

Possession adverse to a tenant-in-tail shall run on against the remainder-men whom he might have barred

22. When a tenant-in-tail of any land or rent entitled to recover the same shall have died before the expiration of the period hereinbefore limited which shall be applicable in such case for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate interest or right which such tenant-in-tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent but within the period during which, if such tenant-in-tail had so long continued to live, he might have made such entry or distress or brought such action.

SCHEDULE 4—continued

Where there shall have been possession under an assurance by a tenant-in-tail which shall not bar the remainders they shall be barred at the end of 20 years after the time when the assurance if then executed would have barred them

23. When a tenant-in-tail of any land or rent shall have made an assurance thereof which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail and any person shall, by virtue of such assurance at the time of the execution thereof or at any time afterwards, be in possession or receipt of the profits of such land or in the receipt of such rent and the same person or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail) shall continue to be in such possession or receipt for the period of 20 years next after the commencement of the time at which such assurance, if it had then been executed by such tenant-in-tail or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of 20 years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate interest or right to take effect after or in defeasance of such estate tail.

No suit in equity to be brought after the time when the plaintiff if entitled at law might have brought an action

24. No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which by virtue of the provisions hereinbefore contained he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate interest or right in or to the same as he shall claim therein in equity.

In cases of express trust the right shall not be deemed to have accrued until a conveyance to a purchaser

25. When any land or rent shall be vested in a trustee upon any express trust the right of the cestuique-trust or any person claiming through him to bring a suit against the trustee or any person claiming through him to recover such land or rent shall be deemed to have first accrued, according to the meaning of this Act, at, and not before, the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

SCHEDULE 4—continued**In cases of fraud no time shall run whilst the fraud remains concealed**

26. In every case of a concealed fraud the right of any person to bring a suit in equity for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at, and not before, the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents or for setting aside any conveyance of such lands or rents on account of fraud against any *bona fide* purchaser for valuable consideration who has not assisted in the commission of such fraud and who, at the time that he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

Saving the jurisdiction of equity on the ground of acquiescence or otherwise

27. Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of courts in refusing relief on the equitable ground of acquiescence or otherwise to any person whose right to bring a suit may not be barred by virtue of this Act.

Mortgagor to be barred at the end of 20 years from the time when the mortgagee took possession or from the last written acknowledgment

28. When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage but within 20 years next after the time at which the mortgagee obtained such possession or receipt unless, in the meantime, an acknowledgement of the title of the mortgagor or his right of redemption shall have been given to the mortgagor or some person claiming his estate or to the agent of such mortgagor or person in writing signed by the mortgagee or the person claiming through him, and in such case no such suit shall be brought but within 20 years next after the time at which such acknowledgment, or the last of such acknowledgements if more than one, was given, and, when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons or his or their agent shall be as effectual as if the same had been given to all such mortgagors or persons, but, where there shall be more than one mortgagee or more than one person claiming the estates or interest of the mortgagee or mortgagees, such acknowledgment signed by one

SCHEDULE 4—continued

or more of such mortgagees or persons shall be effectual only as against the party or parties signing as aforesaid and the person or persons claiming any part of the mortgage money or land or rent by from or under him or them and any person or persons entitled to any estate or estates interest or interests to take effect after or in defeasance of his or their estate or estates interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent, and, where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein and not to any ascertained part of the mortgaged money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment with interest of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage.

No lands or rents to be recovered by ecclesiastical or eleemosynary corporation sole but within two incumbencies and 6 years or 60 years

29. It shall be lawful for any Archbishop, Bishop, Dean, Prebendary, Parson, Vicar, Master of Hospital or other spiritual eleemosynary corporation sole to make an entry or distress or to bring an action or suit to recover any land or rent within such period as hereinafter is mentioned next after the time at which the right of such corporation sole or of his predecessor to make such entry or distress or bring such action or suit shall first have accrued (that is to say) the period during which 2 persons in succession shall have held the office or benefice in respect whereof such land or rent shall be claimed and 6 years after a third person shall have been appointed thereto if the times of such incumbencies and such term of 6 years taken together shall amount to the full period of 60 years and if such times taken together shall not amount to the full period of 60 years, then during such further number of years in addition to such 6 years as will with the time of the holding of such 2 persons and such 6 years make up the full period of 60 years, and no such entry, distress, action or suit shall be made or brought at any time beyond the determination of such period.

At the end of the period of limitation the right of the party out of possession to be extinguished

34. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any other action or suit, the right and title of such person to the land, rent or advowson for the recovery whereof such

SCHEDULE 4—continued

entry, distress, action or suit respectively might have been made or brought within such period shall be extinguished.

Receipt of rent to be deemed receipt of profits

35. The receipt of the rent payable by any tenant from year to year or other lessee shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purpose of this Act.

Real and mixed actions abolished after the 31st December 1834

36. No Writ of Right Patent, Writ of Right Quia dominus remisit curiam, Writ of Right in capite, Writ of Right in London, Writ of Right Close, Writ of Right de rationabili parte, Writ of Right of Advowson, Writ of Right upon Disclaimer, Writ De rationabilibus divisis, Writ of Right of Ward, Writ De consuetudinibus et servitiis, Writ of Cessavit, Writ of Escheat, Writ of Quo jure, Writ of Secta ad molendinum, Writ De essendo quietum de theolonio, Writ of Ne injuste vexes, Writ of Mesne, Writ of Quod permittat, Writ of Formedon in descender, in remainder, or in reverter, Writ of Assize of novel disseisin, Nuisance, Darrein-presentment, Juris utrum or Mort d'ancestor, Writ of Entry sur disseisin, in the quibus, in the per, in the per and cui, or in the post, Writ of Entry sur intrusion, Writ of Entry sur alienation dum fuit non compos mentis, Dum fuit infra aetatem, Dum fuit in prisona, Ad communem legem, In casu proviso, In consimili casu, Cui in vita, Sur cui in vita, Cui ante divortium, or Sur cui ante divortium, Writ of Entry sur abatement, Writ of Entry Quare ejecit infra terminum, or Ad terminum qui praeteriit, or Causa matrimonii praelocuti, Writ of Aiel, Besaiel, Tresaiel, Cosinage, or Nuper obiit, Writ of Waste, Writ of Partition, Writ of Disceit, Writ of Quod ei deforceat, Writ of Covenant real, Writ of Warrantia chartae, Writ of Curia claudenda or Writ Per quae servitia, and no other action real or mixed (except a Writ of Right of Dower or Writ of Dower unde nihil habet or a Quare impedit or an Ejectment) and no plaint in the nature of any such writ or action (except a plaint for freebench or dower), shall be brought.

No descent warranty, &c., to bar a right of entry

39. No descent, cast, discontinuance or warranty which may happen or be made shall toll or defeat any right of entry or action for the recovery of land.

SCHEDULE 4—continued

Money charged upon land and legacies to be deemed satisfied at the end of 20 years if there shall be no interest paid or acknowledgment in writing in the meantime

40. No action or suit of other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or other wise charged upon, or payable out of, any land or rent at law or in equity or any legacy but within 20 years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for, or release of, the same, unless, in the meantime, some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing signed by the person by whom the same shall be payable or his agent to the person entitled thereto or his agent, and, in such case, no such action or suit or proceeding shall be brought but within 20 years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was given.

No arrears of rent or interest to be recovered for more than 6 years

42. No arrears of rent or of interest in respect of any sum of money charged upon, or payable out of, any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit but within 6 years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto or his agent signed by the person by whom the same was payable or his agent: Provided nevertheless that, where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within 1 year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid although such time may have exceeded the said term of 6 years.

Short title

43. This Act, in its application in the Territory, may be cited as the Real Property (Limitation of Actions) Act (Imperial) 1833.

SCHEDULE 4—continued**NOTES**

- (a) The Real Property (Limitation of Actions) Act (Imperial) 1833 (being Imperial Act 3 and 4 Wm. IV c. 27), in its application in the Territory by virtue of the Real Property (Limitation of Actions) Act 1837, comprises the Real Property (Limitation of Actions) Act (Imperial) 1833 as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Real Property (Limitation of Actions) Act (Imperial) 1833 in Part 1 of this Schedule.
- (b) Imperial Act 3 and 4 Wm. IV c. 27 did not contain a short title, but the short title “Real Property (Limitation of Actions) Act (Imperial) 1833” has been given to it by a new section 43 substituted for the original section 43 by the *New South Wales Acts Application Ordinance 1985*.
- (c) Sections 15, 19, 30, 31, 32, 33, 37, 38, 41, 44 and 45 were repealed by the *New South Wales Acts Application Ordinance 1985*.
- (d) The application of the Real Property (Limitation of Actions) Act (Imperial) 1833 in the Territory is affected by—
 - (i) sections 24 and 36 of the Trust Property Act 1862 of New South Wales in its application in the Territory (printed as Part 12 of Schedule 2 to the *New South Wales Acts Application Ordinance 1985*); and
 - (ii) section 69 of the *Real Property Ordinance 1925*.

SCHEDULE 4—continued

PART 2

WRITTEN MEMORANDUM ACT (IMPERIAL) 1828 9 Geo. IV. c.14

An Act for rendering a written memorandum necessary to the validity of certain promises and engagements

WHEREAS, by an Act passed in England in the twenty-first year of the reign of King James the First, it was among, other things, enacted That all actions of account and upon the case, other than such accounts as concern the trade of merchandise between merchant and merchant their factors or servants, all actions of debt grounded upon any lending or contract without speciality and all actions of debt for arrearages of rent should be commenced, within 6 years next after the cause of such actions or suit and not after:

And whereas various questions have arisen in actions founded on simple contract as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments:

And it is expedient to prevent such questions and to make provision for giving effect to the said enactments and to the intention thereof:

Be it therefore enacted, as follows:

In actions of debt or upon the case no acknowledgment shall be deemed sufficient unless it be in writing or by part payment

1. In actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take any case out of the operation of the said enactment or to deprive any party of the benefit thereof unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby and that, where there shall be 2 or more joint contractors or executors or administrators of any contractor, no such joint contractor executor or administrator shall lose the benefit of the said enactment so as to be chargeable in respect, or by reason only, of any written acknowledgment or promise made and signed by any other or others of them:

Provided always that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever:

SCHEDULE 4—continued

Provided also that in actions to be commenced against 2 or more such joint contractors or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff though barred by the said recited Act, or by this Act, as to 1 or more of such joint contractors or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants by virtue of a new acknowledgment or promise or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover and for the other defendant or defendants against the plaintiff.

Indorsements of payments

3. No indorsement or memorandum of any payment written or made upon any promissory note, bill of exchange or other writing by, or on the behalf of, the party to whom such payment shall be made shall be deemed sufficient proof of such payment so as to take the case out of the operation of the said Statute.

Simple contract debts alleged by way of set-off

4. The said recited Act and this Act shall be deemed and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant either by plea, notice or otherwise.

Short title

5. This Act, in its application in the Territory, may be cited as the Written Memorandum Act (Imperial) 1828.

NOTES

- (a) The Written Memorandum Act (Imperial) 1828 (being the Imperial Act 9 Geo. IV. c.14), in its application in the Territory by virtue of the Written Memorandum Act 1834, comprises sections 1, 3 and 4 of the Written Memorandum Act (Imperial) 1823 (being the sections in force in New South Wales immediately before 1 January 1911), as amended by the *New South Wales Acts Application Ordinance 1985*. The amendments so made have been incorporated in the text of the Written Memorandum Act (Imperial) 1823 in Part 2 of this Schedule.
- (b) Section 2 ceased to apply in New South Wales before 1 January 1911 by virtue of the General Legal Procedure Act, 1902 and sections 5 to

SCHEDULE 4—continued

10 so ceased to apply by virtue of the Usury, Bills of Lading, and Written Memorandum Act, 1902.

- (c) Imperial Act 9 Geo. IV, c14 did not contain a short title, but the short title “Written Memorandum Act (Imperial) 1828” has been given to it by the addition of section 5 by the *New South Wales Acts Application Ordinance 1985*.

NOTE

- 1. Notified in the *Commonwealth of Australia Gazette* on 28 June 1985.