

# REFORM OF THE REAL PROPERTY ACTS IN QUEENSLAND

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[In this article reference to the 'Act' or to a section or other portion of an Act are, unless the context requires otherwise, to the Real Property Acts 1861-1986 or the relevant portion thereof.]

## 1. Introduction

Registration of title to land in Queensland dates back to 1861 and the enactment in that year of the *Real Property Act of 1861*. With the enactment of this statute, Queensland was the first other jurisdiction to adopt Sir Robert Torrens wide ranging reforms of conveyancing in South Australia, which were first enacted in 1858. Indeed it is often argued that Queensland followed too quickly,<sup>1</sup> in that it copied the original South Australian scheme before the amendments consequent upon the South Australian Real Property Commission of 1861 had been enacted.

Some of the later South Australian reforms were adopted by the *Real Property Act of 1877*. This legislation also dealt with some of the problems which case law had brought to notice in the intervening years. However, since this Act took the form of a separate additional Act rather than textually amending the original legislation, Queensland's legislation dealing with the registration of title, the so-called 'Torrens System', remained in far less than a perfect condition.

The only other major amendments prior to 1986, were the 1952 amendments. In relation to the primary purpose, which was to make provision for the acquisition of title by adverse possession to land under the Real Property Acts, (in consequence of the decision in *Miscamble v. Phillips*,<sup>2</sup> which had ruled out such acquisition in respect of such land), this legislation followed the pattern of that of 1877 in that the new substantive provisions were enacted as part of the *Real Property Acts Amendment Act of 1952*, rather than being inserted into the original 1861 Act by textual amendment. However, there were extensive amendments of other parts of the Acts as well.

## 2. Role of the Queensland Law Reform Commission

The last fifteen years has seen major work by the Queensland Law Reform Commission in the field of property law. This has led, successively, to the enactment of the *Trusts Act* in 1973, the *Property Law Act* in 1974, and the *Succession Act* in 1981. Meanwhile, the *Public Trustee Act 1978* was enacted as a Government initiative, replacing the old *Public Curator Act*.

This legislation has greatly simplified and improved property law in Queensland, to a point where it can be said to be among the leaders in that part of the world whose legal system derives from English common law. One major area of property law remains to be reformed, and that is the legislation relating to the registration of title to land. This legislation is currently spread over the following Acts of Parliament:

*Real Property Act 1861-1986*

*Real Property Act 1877-1986*

*Real Property (Commonwealth Defence Notification) Act 1929*

*Real Property (Commonwealth Titles) Act 1924*

1 See D.S. Whalan, *The Torrens System in Australia*, (1982) at 8-9.

2. [1936] St.R.Q. 136.

*Real Property (Local Registries) Act 1887*  
*Real Property Acts Amendment Act 1952*  
*Real Property Acts Amendment Act 1956-1974*  
*Real Property Act Amendment Act 1976*  
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so there is considerable scope for consolidation.

(a) **1985 Amendments**

The Real Property Acts have been the subject of a reference to the Law Reform Commission for some years, but until recently progress has been slow owing to the complexity of the matter, and the tendency for any proposal for reform to meet with considerable criticism from numerous viewpoints. An example is the *Real Property Act Amendment Act 1985*, which may be regarded as a very minor first stage of implementation of the reform of the Real Property Acts, since it adopted some proposals made in the first Law Reform Commission Working Paper issued in relation to the Real Property Acts.<sup>3</sup>

Although the working paper talked of amending the Real Property Acts with respect to those provisions relating to writs of execution, bills of encumbrance, bills of mortgage, and caveats, the lack of any consensus in the legal profession in relation to the proposals relating to writs of execution and caveats, meant that only the proposals relating to mortgages and encumbrances were enacted. Even this matter was hotly debated, and controversy over this and other contents of the legislation meant that it was deferred to the next sittings several times after being introduced to Parliament.

Ultimately, the result in terms of reform and updating of the *Real Property Acts* was very small, amounting merely to a paving of the way for the eventual abolition of encumbrances, by broadening the definition of 'mortgages' in the Acts sufficiently for the separate category of encumbrances no longer to be needed.<sup>4</sup> Even in relation to this matter caution prevailed to the extent that the provisions relating to encumbrances were left in the Acts 'to wither on the vine' rather than being removed immediately.

Admittedly, the 1985 Amendments had other purposes, notably the reversal of the decisions<sup>5</sup> in *Rock v. Todeschino*<sup>6</sup> and *Hutchinson v. Lemon*<sup>7</sup> which had caused considerable concern to conveyancers. The legislation also included some improvements to s.11 of the 1861 Act,<sup>8</sup> which relate to the powers of the Registrar of Titles, to improve the Registrar's powers on inspection of documents, to record changes of name, and to simplify the register and remove superfluous registrations. It also included a new power to remove patent errors<sup>9</sup> and to incorporate in instruments covenants and conditions from a previously registered memorandum.<sup>10</sup> This last provision allows for general clauses frequently used by a firm of solicitors or corporation in instruments such as leases or mortgages, to be incorporated in a particular lease or mortgage by reference to the memorandum, without need to set out the clauses *in extenso*.

Many of these provisions may be regarded as contributing to the reform of the *Real Property Acts*, although they involve substantive changes, since they make the legislation

3. Law Reform Commission: Working Paper on a Bill to amend the Real Property Acts with respect to those Provisions relating to Writs of Execution, Bills of Encumbrance and Bills of Mortgage, and Caveats.

4. *Real Property Act Amendment Act 1985*, s.2.

5. *Ibid.* s.8.

6. [1983] Qd.R. 356.

7. [1983] Qd.R. 369.

8. *Real Property Act Amendment Act 1985*, s.4.

9. *Ibid.* s.7.

10. *Ibid.* s.6.

more efficient in operation. These minor amendments have recently been followed by much more extensive amendments.

**(b) 1986 Amendments**

The *Real Property Acts and Other Acts Amendment Bill* was introduced into the Legislative Assembly on 13 March 1986, and passed all remaining stages on 19 March. The main thrust of the legislation, as stated by the Minister in his second reading speech, was to make the necessary changes to the Real Property Acts to accommodate the process of computerisation of the Titles Office which is currently taking place over a period of time, and which is expected to be completed by 1994.

A subsidiary objective was to achieve a significant second stage in the process of reform of the *Real Property Acts*, following the minor amendments incorporated in the *Real Property Acts Amendment Act 1985*.

There were several reasons for pursuing the subsidiary objective at the time. The amendments necessary to cater for computerisation were extensive, in that they involved amending a considerable proportion of the sections in the *Real Property Acts*. However, many of these amendments were of an essentially trivial nature, frequently merely involving the deletion of references in the Acts to 'book' in connection with the register. The bulk of such amendments *in toto* necessitated a large Bill, and so it made good sense to include other amendments to sections which had to be amended anyway, so as to remove archaic provisions and wording. There is a school of thought that the only way to achieve modernisation of the *Real Property Acts* within a reasonable time is to adopt some kind of piecemeal approach.

The Law Reform Commission was represented at all major discussions on the Bill following the preparation of the original draft by Parliamentary Counsel, and extensive amendments were made during these discussions. The Law Reform Commission was responsible for virtually all the provisions which did not relate strictly to computerisation or to the implementation of Government Policy in the two areas mentioned below.

The final stage of consultation prior to the presentation of the Bill to Parliament, involved the Queensland Law Society being issued with a draft copy for the consideration of their Conveyancing Committee a few days before publication, for representations to be made and incorporated in the final version.

Unfortunately, the time deadline of July 1 associated with the legislation, which was required to be met if the Titles Office was not to be delayed in its program of computerisation, meant that the amount of general reform and modernisation which could be achieved in this Bill was limited by the need to prepare the legislation in time for passage during the 1985 autumn sittings of Parliament.

As mentioned above the legislation also gave effect to Government policy in several specific areas, namely:

- (i) The issue of certificates of title in undivided shares as tenants in common in relation to timesharing schemes which involve such interests in the name of the developer.

The purpose is to simplify the process of issuing title in such cases.

This objective is achieved by the amendment of s.40, whose original provisions have also been recast into subsections, and whose status relative to s.35 of the *Property Law Act 1974-1985* has been clarified.

The position clearly stated in the legislation now is that s.40 governs whether the legal title to property subject to co-ownership is held on a joint tenancy or a tenancy in common, and s.35 of the *Property Law Act* governs the situation with regard to the beneficial or equitable interest in such property. This approach conforms to the principles that ownership at law should be discoverable from searching the register and that the law favours a joint tenancy while equity favours a tenancy in common.

- (ii) The return of cancelled deeds.

The process of computerisation has already resulted in the Titles Office being geared to issuing a new certificate of title at the conclusion of a transfer rather than recording a memorial on the deed and reissuing it. Furthermore, storage difficulties have necessitated the microfilming of documents preparatory to the destruction of the originals. As original deeds may possess historical or sentimental value, provision is being made in s.46A for the return of cancelled deeds, in a suitable perforated form, to their prior owners.

Section 46A also makes necessary provision for the destruction of obsolete parts of the paper register which are duplicated in the new computerised register, after appropriate microfilming.

Detailed comments on the remainder of the 1986 Act follow. In these comments, no individual reference is made to the numerous amendments of a trivial nature such as those which replace references to the 'register book' with references to the 'register' and references to 'binding up' and 'entering' with references to 'recording'. The object of these amendments is to replace wording which is not apt to embrace a computerised register with neutral wording apt to cover both computerised and the present manual systems of registration, since both will co-exist during the prolonged transitional stage.

The comments generally follow the order of sections in the Act but are grouped for convenience under a number of headings where appropriate.

**(i) Commencement**

As the Titles Office desires to make the new forms mandatory on 1 July 1986, it is provided that those sections whose entry into force is necessary to the attainment of this objective, namely sections 8-10, 25, 30, 43 and 81, should come into force on that date, unless their commencement is postponed by a proclamation issued prior to that date. The remaining substantive provisions will come into force on a date fixed by proclamation, but it is anticipated that in the absence of any complicating factor they will also be brought into force on 1 July.

**(ii) Prescription of Forms**

A cornerstone of the process of computerisation of the Titles Office is the prescription of a form for every transaction, so that the registration process becomes totally ordered and logical. The key section is s.10 which provides for regulations prescribing forms, s.10(1), how they are to be completed, s.10(5), that only such forms may be lodged, s.10(2) and that registration of documents not in such form may be refused, s.10(6). Forms may be required to be submitted in duplicate or triplicate, s.10(3).

There are savings for instruments executed before the commencement of this section, which as explained above, is expected to be 1 July 1986.

Provision is made for persons to be licensed to print forms, s.9, with a penalty of \$100 for breach of this provision, s.10(7).

It is understood that, in framing the regulations, care will be taken not to exclude the possibility of completion of forms in legible handwriting, otherwise the present right of individuals to conduct their own conveyancing transactions could be seriously impaired. Also, provision will be made for a blank form, in order to accommodate any transaction of a novel or unusual kind not specifically envisaged in the legislation.

A consequence of these changes is that all the Schedules to the *Real Property Act of 1861* can be repealed, together with a considerable quantity of materials which relates to details of forms of instruments. (See amendments to ss 3, 56, 59, 65, 77-78).

Some concern has been expressed that the new provisions are too rigid, following the removal of those words in the definition of 'instrument' in s.3 which permitted variations from prescribed forms which did not affect the 'matter or substance'. In this regard, it should be observed that s.40 of the *Acts Interpretation Act 1954-1977*, which permits forms to like effect in place of a prescribed form, has not been expressly excluded.

A somewhat similar concern has been expressed regarding s.10(6), where it has been

argued that the Registrar's discretion should be to register rather than to refuse registration. Again the *Acts Interpretation Act*, this time s.26, appears to resolve the difficulty, since it makes it clear that the use of the word 'may' imports a discretion on the part of the Registrar to exercise or not to exercise the power to refuse registration.

**(iii) Computerisation of Register**

The main changes required to effect this are the amendments of ss 32-35. The changes of wording, though not of substance, were so extensive as to require virtual complete redrafting.

A matter of particular importance is the careful definition of the exact time of registration by s.34(2).

Specific authority to maintain supplementary indices is conferred upon the Registrar of Titles by a new s.32A.

The new s.33(2) authorises the Registrar to retain the certificate of title where the registered proprietor is a minor, while removing references to other disabilities from the section. It is thought that where a person is suffering from a mental disorder it is inappropriate for the Registrar of Titles to be expected to act of his own volition, but rather that the provisions of the *Mental Health Acts* relating to administration of property should be employed.

**(iv) Removal of References to Encumbrances**

The expansion of the definition of 'mortgage' in the Act in 1985 paved the way for the removal of references to encumbrances throughout the Act. These changes affect ss 3, 19-20, 37, 46, 48, 52, 54, 56-60, 62-63, 65-66, 68, 89, 101, 107. There is a saving for existing encumbrances in s.5(1). It is believed that any circumstance where an encumbrance has hitherto been employed can be effectively met by employing a mortgage.

Incidentally, a reference to encumbrances in s.18 has escaped repeal. Such errors are understandable given the difficulty of ensuring all such references are located.

**(v) Removal of Outdated Terms and Provisions**

Reference to a person being 'seised' have been removed in ss 3 and 34, and references to registration abstracts in ss 3 and 105-107 have been repealed.

In a number of instances, where a section is being amended more modern terms are used. For example, in ss 79-81, references to the Registrar-General are replaced by references to the Registrar of Titles. However, there remain many references to the term Registrar-General in the Act.

Sections 85-86 relating to transmissions on bankruptcy, have been much simplified to take account of modern bankruptcy law.

Section 73, which provided for short forms of documents has been repealed, because it is thought that the provision has been overtaken and rendered otiose by s.76A, added in 1985, which provides for the incorporation of provisions contained in a registered memorandum. Section 75 was repealed as probably adding nothing to the Act. Sections 74 and 76 were retained as probably still having some import, but are provisions which should more properly be contained in the *Property Law Act*.

**(vi) Simplification**

The introduction of a range of prescribed forms has enabled a number of provisions to be simplified by the removal from the Act of detailed stipulations regarding the forms of documents. An example of such simplification is the amendment of s.78.

Also, the opportunity afforded by amendment has been utilised to recast a number of provisions into numbered subsections. Sections 36, 40, 45, 46A, 56, 63, 83, 95, 108, 117 and 140 have been accorded this treatment.

**(vii) Powers of Attorney**

Apart from a considerable tidying up of ss 104-108 through the repeal of all provisions

relating to registration abstracts, there have been some substantive changes in the law relating to the effect of revocation of powers of attorney.

Under the new provisions, revocation of a power of attorney will have to be recorded in the register before it will prevent registration of an instrument executed pursuant to the power, and will only block registration where the instrument took effect after the revocation was recorded in the register. This provision is designed to protect purchasers dealing with the attorney, since they can only be expected to search the register as close as possible to settlement to confirm that no revocation has been recorded.

The reference to the time of an instrument taking effect in s.108(e) rather than to the time of execution is designed to prevent an instrument gaining registration on the basis of a considerably earlier execution where settlement of a transaction, which is when a transfer, for example, takes effect, occurs after registration of a revocation of a power of attorney. In such a case it is suggested that it is inappropriate for a purchaser to be able to rely upon the validity of the power since a search of the register immediately before the settlement would have disclosed the fact of revocation.

The provision for recording of powers of attorney in the register under s.104 has meant that s.13 of the *Real Property Act of 1877*, which provided for a separate register of such powers, can be deleted.

#### (viii) Miscellaneous Provisions

Section 10A makes a clear statement of the authority of the Registrar to register transactions, which had previously been absent from the legislation, although such authority was clearly implied by the whole scheme of the Act.

Section 11(4) has been amended so as to enable the Registrar of Titles to require the production of any certificate of title, to enable a correction to be made.

Requirements for advertising have been altered slightly to take account of changes in society, in that the limit around Brisbane necessitating advertisement in a local newspaper has been changed to 50km, in ss 19 and 95. Also references to the newspaper being published in the locality have been altered to references to it circulating there.

Section 95 which enables the Registrar of Titles to dispense with production of documents in certain cases has been amended. In the review of the Real Property Acts it should be considered whether provision should be made for payment of compensation where dispensing with documents leads to loss to a former registered proprietor.

The proviso to s.109 has been deleted. This proviso made reference to a statute of the reign of Elizabeth I which was repealed as part of Queensland law by the Imperial Acts Application Act 1984. The proviso had also lost any purpose since it related to insolvency which is now governed by Commonwealth legislation.

Provisions relating to procedure of transfer and charge, ss 24-28 of the *Real Property Act of 1877* have been repealed since it is thought that transactions which might hitherto have employed this procedure can be carried out just as effectively and conveniently by employing a mortgage.

#### (ix) Amendment of Other Acts

There are major consequential amendments to the *Real Property Act of 1877*, and the opportunity has been taken to remove many obsolete provisions. These include ss 19-20, 22 and 29.

There are also consequential amendments of the following Acts:

*Real Property (Commonwealth Defence Notification) Act 1929*

*Real Property (Commonwealth Titles) Act 1924*

*Real Property (Local Registries) Act 1887*

*Real Property Acts Amendment Act 1952*

*Real Property Acts Amendment Act 1956-1974*

The Schedule contains the formal consequential amendments of the numerous other Acts

which make reference to the *Real Property Acts*. None of these amendments are of major significance.

### 3. The Likely Future Course of Reform

While the 1986 amendments are a considerable step on the road to the goal of achieving a modern statutory framework for registration of title to land, the great bulk of the work remains. It is the author's view that the best way to achieve this is continue the process of piecemeal amendment in relation to those changes to the *Real Property Acts* which are necessary to remove outdated wording and achieve an efficient arrangement of the statutory provisions, without making significant changes in the substance of the legislation. Once this is achieved, and opportunities for carrying this process forward arise twice each year when Parliament sits to pass legislation, particularly when the government is contemplating a minor amendment to achieve some minor change in any case,<sup>11</sup> more substantial reform may be considered, as well as the final stage of repealing all outstanding legislation in this area and replacing it by a single statute.

To summarise, three main stages of reform have been identified:

1. Rearrangement and rewording of existing provisions into a modern form.
2. Consideration of any necessary substantial changes.
3. Enactment of a comprehensive modern statute.

To attempt to catapult these stages together, would in the opinion of the author, risk the complete bogging down of the process of reform in view of the size of the undertaking as a whole.

As a first stage the *Real Property Act of 1861* could be further amended so as to remove otiose and outdated sections, and to update the wording and format of the existing provisions. For example, the remaining references to the 'Colony' could be replaced with more appropriate terminology, and those sections of 1861 vintage which currently consist of one long involved paragraph, or a series of unnumbered paragraphs, could be arranged into subsections. Examples of important sections currently of this nature are ss 44, 123 and 126.<sup>12</sup> Conversely, there are areas of the Act where a number of short sections can be conveniently combined into one, for example, ss 130-134.

In addition, there are a number of specific reforms which would greatly simplify and reduce the quantity of legislation in this field, which are now considered in turn.

#### (a) Elimination of Old System Land

Apparently, the process of conversion of old system land to registered title has been so efficient in Queensland that there are currently less than 80 remaining Old System Titles.<sup>13</sup> Virtually all seem to involve some peculiarity leading to the owners not being interested in pursuing an application to bring the land under the Act. In view of the inconvenience caused to the operation of the Titles Office by the continued existence of this land, and the cluttering of the Act with many sections which are in practice defunct, it is suggested that the time has come to take the bold step of putting an end to this nuisance by vesting all such land in the Public Trustee to hold on trust to give effect to presently subsisting interests, by appropriate exercise of the Registrar of Titles powers under s.250 of the *Property Law Act*. It is understood that this process would take about two years to complete, but this does not

11. This was the case in 1986 quite apart from the motivation arising from the computerisation of the Titles Office, since the Government wished to legislate to deal with the timeshare problem and to provide for the return of cancelled deeds, as described above.

12. Other provisions of this nature are : ss. 60, 84, 89, 104, 116, 124, 127-8, 141.

13. This does not include some old system land vested in the Commonwealth, not having been converted. Such land does not affect the position greatly, since it is in a sense outside the Torrens System anyway in that the primacy of Commonwealth law over State law means that the Commonwealth only observes registration requirements as a matter of courtesy and convenience.

prevent legislation being enacted, as proclamation of the relevant provisions may be deferred to the extent necessary.

Accordingly, it is suggested that ss 17-29 of the Act be repealed, once such action has been carried out. There are a number of other provisions sprinkled through the Real Property Acts which can also be eliminated once there is no longer any Old System land left.<sup>14</sup>

There are several reasons why Queensland is so close to the goal of elimination of Old System land. Queensland was the 'youngest' colony, being separated from New South Wales in 1859 and, as explained above, has one of the 'oldest' registration statutes. Since s.15 prevented the creation of any new Old System land by Crown Grant, there was never very much in Queensland. Also, the process of conversion of what there was has proceeded more efficiently here, perhaps, spurred on by the realisation that the amount to be converted was manageable.

When this goal is achieved, all land in Queensland will be either:

1. Under the Torrens System;
2. Unalienated Crown land;
3. Crown land subject to either the Land Act, or other more specific legislation such as the Miners Homestead Leases Act;
4. Vested in the Crown in right of the Commonwealth.

**(b) Transfer of Other Provisions to 1861 Act**

In view of the repeal of a substantial proportion of the provisions of the 1877 Act which remained extant by the 1986 amendments, it may be argued that the time has come to transfer the remaining provisions to the 1861 Act.

Many provisions of the 1877 Act should logically be combined with provisions of the 1861 Act in any case. For example, s.11 of the 1877 Act may be combined with s.44. Sections 49, 50, 94 of the 1861 Act and s.17 of the 1877 Act can be combined into one section. Sections 30, 30A and 36-40 of the 1877 Act relate to caveats, and should be incorporated in ss 98-103 of the 1861 Act. Section 35 of the 1877 Act should be absorbed in s.91 of the 1861 Act because both sections relate to warrants of execution. Section 18 of the 1877 Act relates to leases and so belongs with the lease sections of the 1861 Act.

As ss 1-3 and 52 automatically lose their import once the rest of the Act is repealed,<sup>15</sup> one is left only with the following sections for which an independent place must be reserved in the 1861 Act:

Section 12 with which may be incorporated ss 14 and 15 dealing with the effective dates of instruments for purposes of priority;

Section 23 to declare that transfers may be made subject to the grant of a lesser interest by the transferee in favour of the transferor;

Section 32 relating to applications by personal representatives to be registered;

Section 46 dealing with registration of vesting orders made by the Supreme Court;

Section 47 providing for compensation for improvements by registered proprietors subsequently ejected (this provision belongs with the remedies sections 123-126 of the 1861 Act);

Sections 48-49 relating to the status of registrable but unregistered documents;

Section 51 preserving equitable jurisdiction.

Similarly, the provisions of the following Acts:

*Real Property (Commonwealth Defence Notification) Act; Real Property (Commonwealth Titles) Act 1924*

*Real Property (Local Registries) Act 1887*

14. For example, ss. 6-10 of the *Real Property Act 1877*.

15. As each Act possesses provisions relating to its short title, commencement, and often interpretation, there is a considerable saving in overall length when the total number of Acts is reduced.



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may be absorbed in a (slightly) enlarged version of the 1861 Act. Since most of these Acts are comparatively short, a high proportion of their total length consists of such matters as commencement, short title etc, sections which disappear on consolidation. They also include a number of outdated provisions.

**(c) Interpretation Provisions**

Section 3 of the 1861 Act, which relates to interpretation requires re-enactment as its definitions are currently not even in alphabetical order. Furthermore, the inclusion of some further definitions could shorten the rest of the Act by employing one word instead of frequently used phrases. For example, 'Registrar' could be used to mean 'Registrar of Titles' and 'office' to mean 'office of the Registrar of Titles'.

**(d) Possible Substantive Changes**

As to the second stage many substantive changes may be proposed. While any fundamental change in the system must be a matter for political debate and resolution, technical changes may be proposed on a number of grounds.

**(e) Resolution of Ambiguities and Uncertainties**

One of these is that ambiguities and uncertainties in the legislation should be resolved. For example, it has always been unclear whether the doctrine of indefeasibility operates in favour of voluntary transferees.<sup>16</sup> One argument in favour is consistency, one against that the object of the doctrine is to protect purchasers for value.

The scope of exceptions to indefeasibility has always been hazy. Is the exception in relation to wrong description of land or of its boundaries available after a transfer for value?<sup>17</sup> What is the precise scope of the '*in personam*' exception to indefeasibility? Are *Palais Parking Station v. Shea*<sup>18</sup> and *Logue v. Shoalhaven Shire Council*<sup>19</sup> correct interpretations of the law? These questions could be clearly answered by suitably framed statutory provisions.

**(f) New Provisions**

New provisions may be added to improve the system of registration of title.

For example, a provision analogous to s.79 of the *Property Law Act 1974-1985*, which provides for variation of mortgages might be made in relation to registered leases.

Loopholes in the system of compensation for loss of an estate should be removed, such as that exposed in *Breskvar v. White*<sup>20</sup> where the limitation period was found to operate adversely. Express provision for compensation could be made where the Registrar dispenses with production of a document under s.95, as this may be thought more likely to lead to a possibility of loss than the normal type of transaction. The difficulties associated with the decisions in *Mayer v. Coe*<sup>21</sup> and *Armour v. Penrith Projects Pty Ltd*<sup>22</sup> which appear to unduly restrict recovery by persons suffering loss as a result of fraudulent registration could be remedied.

16. See *King v. Smail* [1958] V.R. 273.

17. The only case on this *Overland v. Lenehan* (1901) 11 QLJ 59 gives no clear indication.

18. (1980) 24 S.A.S.R. 425.

19. [1979] 1 N.S.W.L.R. 537.

20. [1978] Qd.R. 187.

21. (1968) 88 W.N. (Pt.I) (N.S.W.) 549.

22. [1979] N.S.W.L.R. 98.

prevent legislation being enacted, as proclamation of the relevant provisions may be deferred to the extent necessary.

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may be absorbed in a (slightly) enlarged version of the 1861 Act. Since most of these Acts are comparatively short, a high proportion of their total length consists of such matters as commencement, short title etc, sections which disappear on consolidation. They also include a number of outdated provisions.

**(c) Interpretation Provisions**

Section 3 of the 1861 Act, which relates to interpretation requires re-enactment as its definitions are currently not even in alphabetical order. Furthermore, the inclusion of some further definitions could shorten the rest of the Act by employing one word instead of frequently used phrases. For example, 'Registrar' could be used to mean 'Registrar of Titles' and 'office' to mean 'office of the Registrar of Titles'.

**(d) Possible Substantive Changes**

As to the second stage many substantive changes may be proposed. While any fundamental change in the system must be a matter for political debate and resolution, technical changes may be proposed on a number of grounds.

**(e) Resolution of Ambiguities and Uncertainties**

One of these is that ambiguities and uncertainties in the legislation should be resolved. For example, it has always been unclear whether the doctrine of indefeasibility operates in favour of voluntary transferees.<sup>16</sup> One argument in favour is consistency, one against that the object of the doctrine is to protect purchasers for value.

The scope of exceptions to indefeasibility has always been hazy. Is the exception in relation to wrong description of land or of its boundaries available after a transfer for value?<sup>17</sup> What is the precise scope of the 'in personam' exception to indefeasibility? Are *Palais Parking Station v. Shea*<sup>18</sup> and *Logue v. Shoalhaven Shire Council*<sup>19</sup> correct interpretations of the law? These questions could be clearly answered by suitably framed statutory provisions.

**(f) New Provisions**

New provisions may be added to improve the system of registration of title.

For example, a provision analogous to s.79 of the *Property Law Act 1974-1985*, which provides for variation of mortgages might be made in relation to registered leases.

Loopholes in the system of compensation for loss of an estate should be removed, such as that exposed in *Breskvar v. White*<sup>20</sup> where the limitation period was found to operate adversely. Express provision for compensation could be made where the Registrar dispenses with production of a document under s.95, as this may be thought more likely to lead to a possibility of loss than the normal type of transaction. The difficulties associated with the decisions in *Mayer v. Coe*<sup>21</sup> and *Armour v. Penrith Projects Pty Ltd*<sup>22</sup> which appear to unduly restrict recovery by persons suffering loss as a result of fraudulent registration could be remedied.

16. See *King v. Smail* [1958] V.R. 273.

17. The only case on this *Overland v. Lenehan* (1901) 11 QLJ 59 gives no clear indication.

18. (1980) 24 S.A.S.R. 425.

19. [1979] 1 N.S.W.L.R. 537.

20. [1978] Qd.R. 187.

21. (1968) 88 W.N. (Pt.I) (N.S.W.) 549.

22. [1979] N.S.W.L.R. 98.

On a wider canvas, one might consider such matters as introducing an enduring form of power of attorney,<sup>23</sup> as has recently been done in several sister jurisdictions.

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23. An enduring power of attorney is one which, unlike a power at common law, may be stipulated to continue in force notwithstanding the supervening mental incapacity of the donor.