

## Real Property (Amendment) Ordinance (No. 2) 1983

No. 68 of 1983

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 December 1983.

N. M. STEPHEN  
Governor-General

By His Excellency's Command,

TOM UREN  
Minister of State for Territories and  
Local Government

An Ordinance to amend the *Real Property Ordinance 1925*

### Short title

1. This Ordinance may be cited as the *Real Property (Amendment) Ordinance (No. 2) 1983*.<sup>1</sup>

### Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Real Property Ordinance 1925*.<sup>2</sup>

### Interpretation

3. Section 6 of the Principal Ordinance is amended—

(a) by omitting from sub-section (1) the definition of "Instrument" and substituting the following definition:

"instrument" includes a transfer, a lease, a sub-lease, an endorsement on a lease under section 86, a memorandum of surrender of a lease, a memorandum of mortgage, a memorandum of encumbrance, a memorandum of provisions and a memorandum of creation of an easement but does not include a Crown Lease;" and

(b) by inserting after the definition of "Land" in sub-section (1) the following definition:

"memorandum of provisions" means a memorandum registered in pursuance of section 103A;"

4. After section 47A of the Principal Ordinance the following section is inserted:

**Registration of memoranda of provisions**

“47B. A memorandum of provisions shall be deemed to be registered when a memorial of registration is endorsed upon it and signed by the Registrar.”.

**Instrument entitled to priority according to date of registration**

5. Section 48 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1) “and memoranda of provisions” after “grants”;
- (b) by inserting in sub-section (1A) “and memoranda of provisions” after “grants”;
- (c) by inserting in sub-section (1B) “a memorandum of provisions,” after “a grant,”; and
- (d) by inserting in sub-section (4) “(other than a memorandum of provisions) that is” after “instrument” (first occurring).

**Certified copies to be furnished by Registrar and to be evidence**

6. Section 65 of the Principal Ordinance is amended—

- (a) by inserting in sub-section (1) “, memorandum of provisions” after “certificate of title”; and
- (b) by inserting in sub-section (2) “, memorandum” after “certificate of title”.

**Land, how leased**

7. Section 82 of the Principal Ordinance is amended by adding at the end thereof the following sub-sections:

“(3) A lease in the form in the Eighth Schedule may incorporate by reference any or all of the provisions contained in a memorandum of provisions.

“(4) Where a lease in the form in the Eighth Schedule incorporates by reference provisions contained in a memorandum of provisions, the provisions so incorporated shall be deemed to be set out at length in the lease.”.

**Lessee may sub-let**

8. Section 88 of the Principal Ordinance is amended by inserting after sub-section (1) the following sub-sections:

“(1A) A sub-lease in the form in the Eighth Schedule may incorporate by reference any or all of the provisions contained in a memorandum of provisions.

“(1B) Where a sub-lease in the form in the Eighth Schedule incorporates by reference provisions contained in a memorandum of provisions, the provisions so incorporated shall be deemed to be set out at length in the sub-lease.”.

**Lands under this Ordinance, how mortgaged or encumbered**

9. Section 92 of the Principal Ordinance is amended by inserting after sub-section (3) the following sub-sections:

“(3A) A memorandum of mortgage in the form in the Ninth Schedule or a memorandum of encumbrance in the form in the Tenth Schedule may incorporate by reference any or all of the provisions contained in a memorandum of provisions.

“(3B) Where a memorandum of mortgage in the form in the Ninth Schedule or a memorandum of encumbrance in the form in the Tenth Schedule incorporates by reference provisions contained in a memorandum of provisions, the provisions so incorporated shall be deemed to be set out at length in the memorandum of mortgage or encumbrance.”.

10. After Division 3 of Part X of the Principal Ordinance the following Division is inserted:

***“Division 3A—Memoranda of provisions***

**Registration of memoranda of provisions**

“103A. (1) A person may present for registration a memorandum containing provisions that are to be incorporated by reference in—

- (a) leases or sub-leases in the form in the Eighth Schedule that are to be prepared or executed by him;
- (b) memoranda of mortgage in the form in the Ninth Schedule that are to be prepared or executed by him; or
- (c) memoranda of encumbrance in the form in the Tenth Schedule that are to be prepared or executed by him.

“(2) A memorandum referred to in sub-section (1) shall be in accordance with the form in the Twenty-fifth Schedule and shall be signed by the person for whom it is lodged or by his solicitor.

“(3) The Registrar shall, upon presentation to him of a memorandum that complies with the requirements of this section, register the memorandum.”.

**Power of Minister to determine fees**

11. Section 139 of the Principal Ordinance is amended by inserting in sub-section (2) “9A,” after “9,”.

**Eighteenth Schedule**

12. The Eighteenth Schedule to the Principal Ordinance is amended by inserting after item 9 the following item:

“9A Lodging for registration a memorandum of provisions.”.

**Twenty-fifth Schedule**

**13.** The Principal Ordinance is amended by adding at the end thereof the following Schedule:

"TWENTY-FIFTH SCHEDULE  
AUSTRALIAN CAPITAL TERRITORY  
*Real Property Ordinance 1925*  
*Memorandum of Provisions*

Section 103A

I, (*Christian name and surname in full with residence and occupation*), certify that this memorandum comprising page(s) is lodged on behalf of and contains provisions that are to be incorporated by reference in such\* as refer to this memorandum.

\*insert  
"leases",  
"sub-leases",  
"mortgages"  
or  
"encumbrances"

Dated 19 . . . . .

*(Signature of person on behalf of  
whom the memorandum is  
lodged or his solicitor.)*

[Here insert the provisions that are to be incorporated by reference in other instruments].

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**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 30 December 1983.
2. No. 1, 1925 as amended to date. For previous amendments see Note 2 to No. 39, 1983 and see also No. 39, 1983.