

## CLAUSE NOTES

### *LAND (MISCELLANEOUS AMENDMENTS) BILL 2020*

Clause 1            **Short Title**

Clause 2            **Commencement**

This clause provides for the provisions of this Act to commence on a day or days to be proclaimed.

Part 2              **Abandoned Lands Act 1973 Amended**

Clause 3            **Principal Act**

This clause provides that the *Abandoned Lands Act 1973* is the Principal Act for Part 2.

Clause 4            **Section 10 amended (Effect of registration of abandoned land notices)**

The amendment to section 10(4) to provide that the Recorder of Titles 'may' rather than 'shall' issue a certificate of title aligns the legislation with the existing provisions of section 33(8) of the *Land Titles Act 1980*. That section provides that the Recorder 'may' rather than 'must' prepare a certificate of title and contemplates a future paperless certificate of title regime.

Clause 5            **Section 11 amended (Compensation in respect of registration of abandoned land notice)**

The amendment to section 11(11)(a) creates flexibility in the legislation to anticipate a future move to paperless certificates of title by referring to the grant, 'if any' or the certificate of title, 'if any'. It contemplates that a certificate of title may not exist.

The amendment to section 11(11)(b) in relation to the required documents to be lodged with the Recorder of Titles broadens the existing section 11(11)(b) which presently only refers to the 'last conveyance of, or document of title to, the land has been delivered to the Crown Solicitor'. The amendment now more accurately provides that where the land is not registered land, all the deeds that collectively evidence a good root of title, which includes the last conveyance of the land or document of title (if any), have been delivered to the Crown Solicitor.

Part 3              **Associations Incorporations Act 1964 Amended**

Clause 6            **Principal Act**

This clause provides that the *Associations Incorporations Act 1964* is the Principal Act for Part 3.

Clause 7            **Section 13 amended (Vesting of property in incorporated association)**

The amendment to section 13(3) contemplates that a paperless title regime may be implemented in the future and that a paper certificate of title may not be issued. The amendment provides that the obligation of the Recorder of Titles to enter information upon a paper certificate of title is instead changed to require the Recorder to enter the information on the folio of the Register for the land within the meaning of that Act.

The 'Register' is the register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*.

**Part 4                    Conveyancing and Law of Property (Building Title Plans) Regulations 2012 Amended**

**Clause 8                Principal Regulations**

This clause provides that the *Conveyancing and Law of Property (Building Title Plans) Regulations 2012* are the Principal Regulations for Part 4.

**Clause 9                Regulation 8 amended (Notification on certificate of title)**

The amendment to Regulation 8 contemplates that a paperless title regime may be implemented in the future and that a paper certificate of title may not be issued. The amendment provides that the obligation of the Recorder of Titles to enter information upon a paper certificate of title is instead changed to require the Recorder to enter the information on the folio of the Register for the building title plan.

The 'Register' is the register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*.

**Part 5                    Conveyancing and Law of Property Act 1884 Amended**

**Clause 10              Principal Act**

This clause provides that the *Conveyancing and Law of Property Act 1884* is the Principal Act for Part 5.

**Clause 11              Section 84D amended (Vesting of blocks subject to rights of way)**

Section 84D(8) is amended to modify the reference to requiring a 'certificate of title' or an application to dispense with production of a certificate of title to be lodged with the Recorder of Titles, and separating the section further into subsections 84(D)(8)(a)(b) and (c).

The words '*if any*' are included in new subsections 84(D)(8)(a) and (b) after reference to providing to the Recorder of Titles the certificate of title to the land or an application to dispense with the requirement to provide the certificate of title. These amendments contemplate that a paperless title regime may be implemented in the future and that a paper certificate of title may not be issued.

This is also supported by the retention of the existing option of provision of evidence to enable the Recorder to bring the land under the *Land Titles Act 1980*, encapsulated in new subsection 84(D)(c).

**Part 6**                    **Homes Act 1935 Amended**

**Clause 12**                **Principal Act**

This clause provides that the *Homes Act 1935* is the Principal Act for Part 6.

**Clause 13**                **Section 18B amended (Enforcement of restriction on transfers, &c., of land sold)**

The amendments to subsections 18B(2), (4), (6) and (10) contemplate that a paperless title regime may be implemented in the future and that a paper certificate of title may not be issued. The amendment provides that the obligation of the Recorder of Titles to enter information upon a paper certificate of title is instead changed to require the Recorder to enter the information on the folio of the Register for the land within the meaning of that Act.

The 'Register' is the register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*. The Recorder 'may' also make a corresponding recording on the certificate of title, if any, of the land, if it is produced to the Recorder.

The addition of the words '*if any*' in subsection 18B(2) also contemplate that a paper certificate of title may not have been issued.

The addition of the words '*or her*' after 'him' to subsection 18B(4), appropriately broadens the gender reference to the statutory position of the Recorder of Titles.

**Part 7**                    **Land Acquisition Act 1993 Amended**

**Clause 14**                **Principal Act**

This clause provides that the *Land Acquisition Act 1993* is the Principal Act for Part 7.

**Clause 15**                **Section 21 amended (Notice to former owner after acquisition)**

Section 21 is amended by omitting '60 days' and substituting '6 months' in section 21(2) of the *Land Acquisition Act 1993*. The change provides a former owner of land a longer period within which to lodge a claim for compensation. It also aligns with similar time periods within that Act.

**Clause 16**                **Section 34 amended (Amount of compensation for mortgagee)**

Section 34 is amended by omitting '60 days' and substituting '6 months' in section 34(3)(b) of the *Land Acquisition Act 1993*. The change provides a mortgagee a longer period within which to lodge a claim for compensation. It also aligns with similar time periods within that Act.

**Clause 17            Section 66 amended (Public Trustee to represent unascertained owner)**

Section 66 is amended to allow electronic communication with an electronic signature. The amendment enables an acquiring authority who is unable to ascertain the existence or address of an owner of subject land to effect service on the Public Trustee. This section is amended to also provide that an 'electronic address' indicated by the person, in electronic or other correspondence to the acquiring authority or the Public Trustee, to be the electronic address to which a notice or other document may be served or given electronically, is also an 'address'.

**Clause 18            Section 80 amended (Signing of notices and other documents)**

Section 80 is amended to provide that the signature of a person may be electronic. New subsections 80(2) and 80(3) are inserted. Subsection 80(2) provides that if a notice or other document is served on a person electronically under section 81, the signature of a person on a notice or other document may be, but is not required to be, an electronic signature. Subsection 80(3) also provides that if a form has been approved for the purposes of this Act by the Secretary, that a person may electronically sign the form.

**Clause 19            Section 81 amended (Service of notices and other documents)**

Section 81 is amended to allow for electronic service under the Act.

The section includes other insertions referring to the Valuer-General sending and receiving electronically at an electronic address that has been indicated by the person, for giving notice or serving of documents, regardless of consent.

The section also provides for service from the Secretary, Crown or Minister electronically.

The section also provides that the respective time for service as being at the time at which it reaches the electronic address and is capable of being read at that address.

**Part 8                Land Titles Act 1980 Amended**

**Clause 20            Principal Act**

This clause provides that the *Land Titles Act 1980* is the Principal Act for Part 8.

**Clause 21            Section 13 amended (Notices)**

This section is amended by substituting the time periods in subsections 13(1)(a), 13(1)(b) and 13(3) of 'one month' for '30 days'. This does not change the periods of time allowed but changes how the time periods are expressed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 22**            **Section 24 amended (Qualified title may be cancelled or corrected in certain circumstances)**

The amendment section 24 omits the existing subsection 24(1) and replaces it with a new subsection 24(1). The amendments modify the gender reference of the Recorder of Titles from 'him' to '*the Recorder*' therefore appropriately broadening the gender reference to the statutory position of the Recorder of Titles. The change also substitutes the word 'shall' for '*must*' which is more appropriate language.

Subsection 24(2) is amended by changing the reference from 'his claim' to '*the applicant's claim*' which appropriately modifies a gender reference. The amendment also inserts the words '*if any*' in subsections 24(1)(b) and 24(2) where it refers to 'certificate of title'. The use of the words '*if any*' contemplate a future paperless title regime.

**Clause 23**            **Section 31 amended (Persons to produce deeds)**

Subsection 31(4) is omitted and replaced with new subsections 31(4) and 31(5). New subsection 31(4) removes the requirement on the part of the Recorder to deliver to that person a physical paper certificate of title where a person is required to produce to the Recorder instruments constituting or in any way affecting a title. This is in contemplation of a future paperless title regime.

However, the amendment makes clear that the Recorder must, as a condition, if required by the person before producing the documents, create for that land a folio of the Register. The new subsection 31(5) carves the balance of the existing 31(4) into a stand alone provision which repeats the existing wording that an order made under subsection (2) (an order that may be made by the Supreme Court) may contain a similar condition to the condition referred to in subsection 31(4).

**Clause 24**            **Section 35 amended (Lost certificate of title, folio of the Register, or duplicate registered dealing)**

This section relates to the making of an application for a new certificate of title if the original certificate of title or duplicate grant is lost or destroyed. The Recorder of Titles may issue a new certificate of title if satisfied the original has been lost, misplaced or destroyed, subject to appropriate advertising, notice or indemnity required by the Recorder of Titles.

This clause omits subsection (1) with the section separated into subsections for ease of reading. The amendment to provide that the Recorder '*may*' accept an application for a new certificate of title aligns with other amendments to contemplate a future paperless title regime if paper certificates of title are not routinely issued. The amendment also clarifies that any notice, advertising or indemnity needs to be '*to the satisfaction of the Recorder*'.

The section is also amended to include the words *'or her'* after the reference to the Recorder of Titles to appropriately broaden the gender reference to the statutory position of the Recorder.

**Clause 25            Section 50 amended (Dealings not to be registered except in accordance with this Act)**

This section is amended by substituting the time period in subsection 50(16) of '3 months' for '90 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 26            Section 51 amended (Recording of dealing on certificate of title, &c.)**

This clause amends subsection 51(1) by omitting the existing section 51(1), separating it into subsections 51(1)(a), (b) and (c) and adding the words *'if any'* after each of *'certificate of title'*, *'grant'* and *'duplicate registered dealing'*.

Subsection 51(2)(f) is also amended by adding the words *'if any'* which contemplates a future paperless title regime or that there may not be a certificate of title, grant or duplicate registered dealing.

Subsection 51(3) is amended by omitting existing paragraphs (a) and (b) and splitting them into new 51(3)(a)(i)(ii) and (iii) and new 51(3)(b)(i)(ii)(iii). The effect of those changes is to refer separately to *'a certificate of title'*, *'a grant'* and *'a duplicate registered dealing'* and to add the words *'if any'* after each reference. These changes make the subsection easier to read and contemplate a future paperless title regime or that there may not be a certificate of title, grant or duplicate registered dealing.

Similar changes are made to subsection 51(5). Subsection 51(5) is also amended to replace the word 'shall' with the word *'may'* in the context of the Recorder making a recording on a paper certificate of title, grant or duplicate registered dealing which aligns with a future paperless title regime. Reference to *'him'* when describing the Recorder is amended to say *'her or she'*.

Existing subsections 51(6) and (7) are replaced by new subsections. The effect of the amendments to those subsections is to broaden the gender reference to the statutory position of the Recorder of Titles to include *'or her'* and *'or she'* and to ensure *'if any'* is included in the context of there being *'any'* certificate of title, grant or duplicate registered dealing.

Subsections 51(9)(a) and (b) are similarly amended with inclusion of the words *'if any'*.

**Clause 27            Section 52 amended (Priority notices)**

This section deals with the lodgement of priority notices on the title to a property. A priority notice reserves priority for the dealings specified in it for a prescribed

length of time. While a priority notice is in force, no other dealings can be registered ahead of dealings listed in the priority notice to be lodged.

Priority notices are commonly used in conveyancing transactions to protect the title from other dealings after signing a contract for sale, settling the purchase and the undertaking all necessary steps leading to lodgement of the transfer documents with the Land Titles Office.

Section 52(2)(b) is amended to remove the currently time period of 60 days and replacing it with reference to a prescribed period. The time period is increased to 90 days and is included as the prescribed period in the *Land Titles Regulations 2012* as new Regulation 18A.

The precise commencement and expiration of a priority notice has now been redefined to eliminate any doubt about its duration.

A priority notice:

- (i) takes effect immediately at the time at which, on the day on which, the priority notice is lodged with the Recorder;
- (ii) extends from that time on that day, for the remainder of that day and for the prescribed period beginning immediately after that day; and
- (iii) ends at midnight on the day that is the last day of the prescribed period.

Therefore, a lodging party will have the benefit of 90 'clear' days from lodgement.

A priority notice ends at midnight on the last day of the prescribed period, regardless of the exact time of day it may have been lodged. This therefore provide certainty as to expiration particularly in the case of multiple priority notices on one title.

#### **Clause 28 Section 52A amended (Attorney-General to give notice of forfeiture orders)**

This section is amended by omitting 'registered as the owner of land under this Act' and substituting '*recorded under this Act as the registered proprietor of land*'.

The amendment achieves consistency with other provisions of the *Land Titles Act 1980* by substituting the word 'owner' for the words '*registered proprietor*'. 'Registered proprietor' has a defined meaning in section 3 of the *Land Titles Act 1980* as '*any person appearing by a folio of the Register, or by any registered dealing, to be the proprietor of any estate or interest in registered land*'.

Changing '*registered*' to '*recorded*' creates consistency with the language used in the *Land Titles Act 1980*.

#### **Clause 29 Section 54 amended (Delivery of certificate of title or duplicate registered dealing)**

Section 54 is amended by omitting the existing subsection 54(1) and replacing it with a new 54(1) and in so doing refines the language.

The section continues to provide that the Recorder may, if the Recorder considers it proper to do so deliver the certificate of title or duplicate registered dealing that

is in the Recorder's custody to the lodging party, unless written instructions have been given to the Recorder to deliver to some other person.

The lodging party who lodged the certificate of title or duplicate registered dealing with the Recorder originally for registration of a dealing (e.g. a bank lodging a mortgage for registration with the original certificate of title) may have the title returned to them unless they have instructed in writing otherwise. The Recorder must not deliver the certificate of title or duplicate registered dealing that is in the Recorder's custody otherwise than in accordance with those instructions or by order of the Supreme Court.

The amendments also provide for the inclusion of the words '*or she*' or changing references from 'he' to '*the Recorder*' therefore appropriately broadening the gender reference of the statutory position of the Recorder of Titles. The amendment also improves and refines the language in section 54(1) including changing 'shall' to '*must*', ensuring 'certificate' means *certificate of title* and 'duplicate' means '*duplicate registered dealing*'.

## Clause 30

### Section 61 amended (Sale under writ)

This section is amended by substituting the time period in subsections 61(2), 61(4), 61(5)(a) and 61(8) of '3 months' for '90 days'. This does not change the periods of time allowed but changes how the time periods are expressed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

Subsection 61(4) is amended by including the words '*or her*' after 'his' with reference to the Recorder of Titles. This appropriately broadens the gender reference to the statutory position of the Recorder of Titles.

Subsection 61(4) is further amended by adding the words '*if any*' after 'relevant certificate of title' and 'duplicate registered dealing'.

The addition of the words '*if any*' in subsection 61(4) contemplate that a paper certificate of title may not have been issued. The additional words also contemplate that there might not be a duplicate registered dealing.

The addition of the words '*registered dealing*' after 'title or duplicate' are included for certainty of interpretation. This makes it clear that 'duplicate' means a '*duplicate registered dealing*' in that scenario.

## Clause 31

### Section 63 amended (Severance of joint tenancy)

Section 63 deals with the process and effect of a severance of a joint tenancy between land owners. This section provides a way in which a joint tenancy of land can be ended by the decision of one owner.

A severance under section 63 is achieved by lodging a declaration of severance of joint tenancy in an approved form with the Recorder of Titles.

Parties who own as joint tenants own their interest jointly and equally. Parties who own as tenants in common also own jointly but may own in equal or unequal



shares. This may be in any number of combinations depending on the agreement between the parties. For example, owning as 50:50, or 60:40 in the case of two tenants in common, or 40:20:20 between three tenants in common.

If a joint tenant dies, the surviving joint tenant inherits the whole of the deceased joint tenant's interest in the land, despite the contents of that deceased person's Will. This may be entirely appropriate and what the parties intend in the case of a jointly owned family home, for example.

A tenancy in common has the opposite effect to a joint tenancy and creates divisible shares with a key difference that it allows a tenant in common to deal with their share under their Will.

Owning property as a joint tenant is a critical decision for estate planning purposes and can be an important consideration in unresolved family law disputes. The right of a joint tenant to sever that relationship is therefore an important right.

When the Land Titles Act 1980 was amended in 2012 by the *Land Titles Amendment Bill 2012*, a new subsection 63(4) was introduced. This provided that when a severance of joint tenancy was lodged by one owner it severed the joint tenancy.

The existing section 63(4) set forth below can be interpreted as ending the entire joint tenancy between all owners if there are more than two owners.

The existing section 63(4) did not adequately address the situation and consequences where there are more than two joint tenants.

The amendment to section 63(4) is to omit the existing subsection 63(4) and to include a new subsection 63(4).

The amendment restates the common law position and eliminates doubt about the effect of a severance of joint tenancy in the case of only two joint tenants or more than two joint tenants.

The amendment makes clear that if there are only two joint tenants, then the joint tenancy between them is severed and they hold as tenants in common in equal shares.

**For example**, if A severed the joint tenancy between A and B, they become tenants in common in equal shares. The joint tenancy is ended.

The amendment makes clear that if there are more than two joint tenants the joint tenancy between the 'remaining owners' remains unchanged if one joint tenant severs.

**For example**, if A severed their interest in the joint tenancy between A, B and C, A will become a tenant in common with B and C. B and C will remain joint tenants as between themselves.

The 'severed interest' is an equal share in the land as between the number of parties who are registered proprietors. The effect of a severance of joint tenancy cannot create a greater interest in the property.

**For example**, A severs the joint tenancy between A, B, C and D. A's interest is now a tenant in common as to a 25% share. The interest of B, C and D remains as a joint tenancy as to a 75% share equally between them.

Section 63 is further amended to provide that the existing subsection 63(5) of the Act that was introduced by the 2012 amendments is omitted.

That subsection is omitted because it is superfluous and it does not create any additional rights or benefits given that parties are free to adjust their interests by way of transfer under the *Land Titles Act 1980*.

Land owners are able to readjust their interests in the title by transfer between themselves pursuant to the provisions of Division 2 of the *Land Titles Act 1980* during their co-ownership or if considered necessary after a severance.

If there are more than two joint tenants, there is nothing to prevent any remaining joint tenants, after a severance has been effected by an owner, to further sever the joint tenancy.

The amendments to section 63(4) restate the common law position and also leave open to the remaining joint tenants after a severance occurs to decide what they wish to do between themselves.

This is a sensible protective measure so that their joint tenancy and estate planning decisions are not automatically changed by default by the actions of one owner which may result in unintended consequences.

**Clause 32            Section 67 amended (Powers in lessor)**

This section amends subsection 67(b) by replacing the time period in subsection 67(b) of '3 months' for '90 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 33            Section 77 amended (Procedure in case of default)**

This section is amended by substituting the time period in subsection 77(1) of 'one month' for '30 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 34            Section 85 amended (Mortgagee may apply to Recorder for order for foreclosure)**

This section is amended by substituting the time period in section 85(1) and 85(2)(a) of '6 months' for '180 days'. This only changes how the time period is expressed, not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 35            Section 86 amended (Order for foreclosure)**

Subsection 86(1) is amended by adding the words '*or she*' after 'he' to appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

Subsection 86(1) is further amended by substituting the time period of 'one month' for '30 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 36            Section 87 amended (First mortgagee or encumbrance to produce title for registration for subsequent dealing)**

This clause amends section 87 through the addition of the words '*if any*' which contemplate that a paper certificate of title may not have been issued. The addition of '*if any*' also contemplate that there might not be a duplicate registered dealing, noting that it is not a requirement to lodge documents in duplicate. This section is also amended by adding '*or she*' to appropriately broaden the gender reference to the first mortgagee or encumbrancee.

The addition of the words '*registered dealing*' after 'duplicate' are included for certainty of interpretation. This makes it clear that 'duplicate' means a '*duplicate registered dealing*' in that scenario.

**Clause 37            Section 93 amended (Registration of order)**

This section provides that the Recorder of Titles will register an order that the Recorder may have made under section 91 of the *Land Titles 1980* declaring a mortgage to be statute barred. The order is to be registered on the folio of the Register or registered dealing evidencing title to the relevant land as are necessary to give effect to the order. The Recorder may also call in the corresponding certificate of title, grant or duplicate registered dealing and the duplicate mortgage or encumbrance.

This clause is amended by adding the words '*if any*' after each of those documents that the Recorder may call in. The existing wording of subsection 93(1) already provides that the Recorder 'may' rather than 'must' call in those documents, noting that the Recorder already has an obligation to record the order on the folio of the Register for the land.

The addition of the words '*if any*' contemplate that a paper certificate of title may not have been issued, or that the other documents may not exist or there may

not, for example, be a duplicate registered dealing or duplicate mortgage or encumbrance.

Subsection 93(1) is also amended by adding the words *'or she'* after *'he'* to appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

**Clause 38      Section 94 amended (Recording of satisfaction of encumbrance)**

Subsection 94(1) is amended by adding the words *'if any'* after each of *'certificate of title'*, *'grant'* and *'duplicate registered dealings'* being documents that the Recorder may call in.

The addition of the words *'if any'* contemplate that a paper certificate of title may not have been issued, or that the other documents may not exist or there may not, for example, be a duplicate registered dealing or duplicate mortgage or encumbrance.

**Clause 39      Section 98 amended (Transmission on death (old procedure))**

This clause omits the existing subsection 98(5) and replaces it with a new subsection 98(5)(a) and (b). The time period in the existing section 98(5) of *'one month'* is substituted for *'30 days'*. This only changes how the time period is expressed, not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a *'month'*.

Subsection 98(5) is also amended by adding the words *'or she'* after *'he'* into the new section 98(5)(a) to appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

The section is further amended by inclusion of new subsection 98(5)(b) which addresses confusion around interpretation of the meaning of *'unless in the interval'* regarding advertising and service of notice and when the Recorder can proceed with registering an application.

The new subsection 98(5)(b) resolves that confusion and now clearly provides that the Recorder may register the applicant as proprietor pursuant to section 98(4), unless in the period between the publication or giving of a notice and the time specified in that notice (which must not be less than 30 days), the Recorder receives a caveat forbidding the Recorder from doing so.

**Clause 40      Section 101 amended (Re-entry determining fee)**

Subsection 101(1) is amended by adding the words *'or her'* after *'his'* to appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

The words *'if any'* are inserted after reference to *'certificate of title'*. The addition of the words *'if any'* contemplate a future paperless title regime.

**Clause 41            Section 126 amended (Registration of acquiring authority as proprietor)**

This section provides for the Recorder of Titles to register an acquiring authority as the registered proprietor of land where appropriate by operation of law. Section 126(4) requires the acquiring authority to take possession of the certificates of title or duplicate registered dealings produced upon any claim for compensation and to lodge them with the Recorder of Titles for the purposes specified in that section.

Section 126(4) is amended by the addition of the words *'if any'* where the section refers to production of certificates of title or duplicate registered dealings. The addition of the words *'if any'* contemplate a future paperless title regime or that a paper certificate of title may not have been issued or that there may not be a duplicate registered dealing.

**Clause 42            Section 133 amended (Caveat against dealings)**

Section 133 provides for registration and withdrawals of caveats on title to land. Section 133(2) provides that a caveat may be signed by the caveator, their legal practitioner, attorney or authorised agent. The existing section 133(5)(a) outlines some scenarios where a caveat may be withdrawn, including by the caveator themselves personally, their legal practitioner or an agent authorised in writing by the caveator to withdraw the caveat.

The amendment to section 133(5)(a) by the inclusion of *'by the caveator, or on the caveator's behalf...'* makes it clear that while the caveator's legal practitioner or authorised agent can withdraw a caveat, it is not in their own right, but on behalf of the caveator who lodged the caveat. The existing section 133(5)(a) simply refers to removal by either the caveator, the legal practitioner or authorised agent and lacked clarity.

Section 133(5) is also amended by the addition of the words *'in the manner approved by the Recorder or the approved form'*. The words 'approved form' have a defined meaning under section 169A of the *Land Titles Act 1980* and contemplate the continued use of an 'approved form'.

The inclusion of the words *'in the manner approved by the Recorder'* also contemplates an ongoing electronic and paperless regime in the future which may provide for a caveat to be removed in other ways approved by the Recorder and not via a specifically 'approved form'.

Section 133(5)(b)(i) is also amended to include *'or her'* after *'his'* with reference to a deceased caveator and appropriately broadens gender references.

**Clause 43            Section 134 amended (Caveat may be lodged by judgment creditor)**

This section addresses registration of judgement creditor caveats with the Recorder of Titles. Section 134(2)(a) is amended by substituting the word 'a copy' with the words *'an office copy'*.

This relates to the requirement for a judgement or order upon which a caveat is founded being lodged with the Recorder of Titles with the caveat for registration.

An 'office copy' has a defined meaning in section 3 of the *Land Titles Act 1980* which says that an office copy means '*in relation to an order, means a copy of the order that is certified by a legal practitioner, a justice or a Commissioner for Declarations to be a true copy of the order*'.

The amendment to this section creates consistency with other provisions of the *Land Titles Act 1980* which require an 'office copy' of a document and upholds the integrity of documents lodged for registration.

**Clause 44                    Section 136A amended (Cancellation of caveat on application of proprietor of estate or interest)**

Section 136A provides a way in which a registered proprietor may make an application to the Recorder of Titles to cancel a caveat on the title to their property. Unless the operation of the caveat is extended by an order of the Court and that order or an office copy of that order is obtained and lodged with the Recorder under subsection 136A(3) before the expiry of 28 days after which the Recorder serves notice on the caveator, the caveat is to be cancelled by the Recorder.

The amendment to section 136A by the addition of the words '*other than under section 134*' make it clear that the ability of a registered proprietor to remove a caveat on their property under section 136A does not apply to judgement creditor caveats, which are separately dealt with in other sections. There are options under sections 135 and 136 of the *Land Titles Act 1980* for removal of judgement creditor caveats which have been registered under section 134.

This clause also omits the existing subsection 136A(4) regarding the effect of not lodging an order extending the operation of the caveat with the Recorder before expiry of the 28 day notice served by the Recorder. Existing subsection 136A(4) is replaced with a new subsection which aligns with section 134(5) when time expires on a day on which the office of the Recorder is closed.

New subsection 136A(4) provides that if an order has not been obtained and lodged under subsection (3) before the end of the next day on which the office of the Recorder is open, the Recorder is to cancel the caveat on the expiry of the next day.

**Clause 45                    Section 138A amended (Registration as proprietor of person entitled to land by operation of any Act)**

Section 138A(3) is amended to include the word '*may*' to provide that the Recorder '*may issue such certificates of title....*'etc. The inclusion of the word '*may*' contemplates a future paperless title regime.

- Clause 46**      **Section 138D amended (Recorder may make vesting order in certain circumstances when purchaser in possession)**
- Sections 138(D)(5)(b), 138D(7) and 138D(8) are amended by substituting the time periods of 'one month' for '30 days' in each subsection. This only changes how the time period is expressed, not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.
- Clause 47**      **Section 138J amended (Acquisition of easements by possession)**
- Section 138J(3)(c) is amended by substituting the time period of '6 months' for '180 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.
- Clause 48**      **Section 138L amended (Requirements for application)**
- This section is amended by removing reference to superseded legislation. Subsection 138L(2) is amended by replacing '*Land Surveyors Act 1909*' with '*Surveyors Act 2002*'.
- Clause 49**      **Section 138Q amended (Powers of Recorder to make recordings, &c.)**
- Section 138Q(b) is amended by inserting '*if any*' after 'dealings'. The amendment to this section contemplates a future paperless title regime and that a certificate of title, grant or duplicate registered dealing may not exist.
- Clause 50**      **Section 138W amended (Registered proprietor to hold land on trust)**
- This section is amended by addressing a reference to obsolete legislation. Subsection 138W(7) is amended by replacing '*Land Surveyors Act 1909*' with '*Surveyors Act 2002*'.
- It is further amended by substituting the time period in subsection 138W(8)(d) of 'one month' for '30 days' and in subsection 138W(9) of 'two months' for '60 days'.
- This only changes how the time period is expressed, not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.
- Clause 51**      **Section 138ZA amended (Restriction on renewal of caveats)**
- This section deals with the restrictions around renewing a caveat that has lapsed under section 138Z of the *Land Titles Act 1980* or a caveat that has been removed pursuant to another section of the *Land Titles Act 1980*, unless an order allowing renewal has been made by the Supreme Court.

If a caveat is lodged for renewal with the Recorder of Titles, a copy of that order is to be attached to the caveat.

Subsection 138ZA(2)(a) is amended by substituting the word 'a copy' with the words 'an office copy'.

An 'office copy' has a defined meaning in section 3 of the *Land Titles Act 1980* which says that an office copy means 'in relation to an order, means a copy of the order that is certified by a legal practitioner, a justice or a Commissioner for Declarations to be a true copy of the order'.

The amendment to this section creates consistency with other provisions of the *Land Titles Act 1980* which require an 'office copy' of a document and upholds the integrity of documents lodged for registration.

**Clause 52            Section 139 amended (Correction of errors)**

Subsection 139(1) is amended by adding the words 'or her' after 'him'. Subsection 139(2)(a) is amended by adding the words 'or she' after 'he'. Both amendments will appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

**Clause 53            Section 140 amended (Cancellation of superfluous recordings)**

Section 140 is amended by adding the words 'or she' after 'as he' and 'or she' after 'which he'. Both amendments will appropriately broaden the gender reference to the statutory position of the Recorder of Titles.

**Clause 54            Section 143A amended (Recorder may specify format, &c., of certain plans)**

This section is amended by addressing a reference to obsolete legislation. It is amended by replacing '*Land Surveyors Act 1909*' with '*Surveyors Act 2002*'.

**Clause 55            Section 143B amended (Recorder may require information, &c., in respect of plans, &c.)**

This section is amended by substituting the time period in subsections 143B(1) and (3) of '3 months' for '90 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.

**Clause 56            Section 144 amended (Proprietor if dissatisfied may summon Recorder to show cause)**

This section is amended by substituting the time period in subsection 144(1A) of '3 months' for '90 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.



- Clause 57**      **Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)**
- This section is amended by substituting the time period in subsection 146(5) of '4 weeks' for '28 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days.
- Clause 58**      **Section 147 amended (Right of mortgagee of lease not to be barred)**
- Section 147 is amended by substituting the time period of '6 months' for '180 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.
- Clause 59**      **Section 152 amended (Compensation for party deprived of land)**
- Section 152(6) is amended by insertion of the words '*if any*' after reference to 'certificate of title'. The insertion of the words '*if any*' contemplate a future paperless title regime.
- Clause 60**      **Section 156 amended (Notice of action)**
- Section 156 is amended by substituting the time period of 'one month' for '30 days'. This only changes how the time period is expressed and not the period of time allowed. This creates consistency with other parts of the *Land Titles Act 1980* which already provide for the expression of time in days. It will also avoid ambiguity of the definition and calculation of the length of a 'month'.
- Clause 61**      **Section 160 amended (General powers of Recorder)**
- Section 160(3) of the Act is amended by adding the words '*or her*' after 'him' to appropriately broaden the gender reference to the statutory position of the Recorder of Titles.
- This section relates to the power of the Recorder to record a caveat on a certificate of title or other instrument in certain circumstances, such as on behalf of the Crown or where fraud or error is suspected. This section is further amended by removing the word 'in' and including the words '*on a folio of the register or*'.
- The 'register' is the Register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*.
- The reason for the change is to include reference to allowing an option for the Recorder to make a recording on a folio of the register for the land. This amendment also contemplates that a paperless title regime may have been implemented in the future and that a paper certificate of title may not have been issued.
- Clause 62**      **Section 169A amended (Power of Recorder to approve forms)**

This section relates to the power of the Recorder of Titles to approve forms for use under the *Land Titles Act 1980* and other legislation administered by the Recorder of Titles or law which requires documents to be lodged with the Recorder. The amendment to subsection 169A(1) of the words 'at any time' make it clear that the Recorder may at any time approve forms for use which includes changing forms.

The Recorder is required by subsection 169A(3)(a) to give notice of approval to the Law Society of Tasmania and to publish notice of the approved form as required by that subsection.

Section 169A(3)(a) is amended by omitting 169A(3)(a)(i) which currently requires the Recorder of Titles to also publish notice of the approved form in the Land Titles Office Practice Book published by the Recorder and in any other publication published by the Recorder relating to the practice and procedure of the Land Titles Office.

The Land Titles Office Practice Book is a hard copy manual and this amendment will remove unnecessary regulation to require updating of that resource.

Notice of any approved form must be given to the Law Society of Tasmania and published in each daily newspaper as required by subsection 169A(3)(a)(ii). Approved forms are made available by the office of the Recorder and appropriate notification of changes to approved forms are part of business as usual work of the office of the Recorder.

## **Part 9 Land Titles Regulations 2012 Amended**

### **Clause 63 Principal Regulations**

This clause provides that the *Land Titles Regulations 2012* are the Principal Regulations for Part 9.

### **Clause 64 Regulation 12 amended (Lodgement of dealings)**

This Regulation is amended by removing the current sub-regulation (2) which requires that an easement in gross or a profit a prendre in gross or appurtenant to land that is not registered land to be lodged in duplicate. Lodging documents in duplicate ('duplicate registered dealings') is an outdated and unnecessary practice and inconsistent with other provisions of legislation. This Regulation specifically required lodgement of easements in gross or profits a prendre in gross to be lodged in duplicate which is generally inconsistent with practice and other provisions of the *Land Titles Act 1980*.

### **Clause 65 Regulation 13 amended (General requirements)**

This Regulation is amended by including in Regulation 13(1)(a) a requirement to lodge documents that have been printed 'on one side of each page' only. This will create greater administrative efficiency.

Regulation 13(1)(i) is amended to provide that a witness to a dealing may also use their *'full workplace address'* instead of their residential address when providing their address on a dealing.

Regulation 13(2)(e) is amending by adding the word 'and' at the end of it for drafting purposes so that new Regulation 13(2)(f) may be inserted which provides that if information is lodged with the Recorder of Titles as a copy, it must also comply with the requirements under the *Land Titles Act 1980* for an *'office copy'*.

An office copy has a defined meaning under section 3 of the *Land Titles Act 1980* which says that an office copy means *'in relation to an order, means a copy of the order that is certified by a legal practitioner, a justice or a Commissioner for Declarations to be a true copy of the order'*.

The amendment to this Regulation creates consistency with other provisions of the *Land Titles Act 1980* which require an *'office copy'* of a document and upholds the integrity of documents lodged for registration.

A new Regulation 2A is inserted into Regulation 13 which requires an application or dealing lodged for registration or any document that forms part of or is provided in relation to the dealing to be in the English language. If they are not in the English language then they must be accompanied by the relevant documents required by new Regulation 2B.

New Regulation 2B introduces further improvements including a requirement that a written translation into the English language of any such document is to be by an appropriately qualified person, and for that person to certify in a form satisfactory to the Recorder, that the translation is complete and accurate.

This amendment is critical to uphold and protect the integrity of documents lodged for registration and to allow the Recorder of Titles to rely on the completeness and accuracy of the contents of the information provided.

Regulation 13(3)(b) is amending by adding the word 'and' at the end of it for drafting purposes so that new Regulation 13(3)(c) is inserted. Regulation 13(3)(c) provides that any alteration to an application, dealing or annexure must be appropriately initialled and dated by or on behalf of each signatory to the application, dealing or annexure.

If an alteration to an application, dealing or annexure is made by anyone other than the signatory, new sub-regulation 13(3A) provides that the person making the alteration is required to provide their name and the capacity in which they are acting on behalf of the signatory. The person dating and initialling the alteration is taken to be representing that they have full legal authority to make that amendment on behalf of the signatory.

Importantly, Regulation 13(3A)(c) provides the Recorder is entitled to rely on the representation without making further enquiry as to whether the person has full legal authority to date and initial the document on behalf of the signatory. That is appropriately a matter between the signatory and the person acting for them.

The amendments to Regulation 13 further uphold the integrity and consistency of documents lodged with the Recorder of Titles.

**Clause 66            Regulation 14 amended (Execution and lodgement of instruments under section 49(2))**

The amendment to Regulation 14(3) by the insertion of the words '*if any that has been issued by the Recorder and that is*' and '*provided to*' in substitution for the existing words 'available to', mean that if there is any certificate of title or duplicate registered dealing that has been issued by the Recorder to be affected by an instrument lodged under section 49(2) of the *Land Titles Act 1980* they are to be provided to the Recorder of Titles with the instrument.

**Clause 67            Regulation 18A inserted**

Regulation 18A is a new Regulation inserted for the purposes of the prescribed period for a priority notice under section 52(2)(b) of the *Land Titles Act 1980*.

The prescribed period provided by Regulation 18A is 90 days. The Act previously included a time period of 60 days.

A priority notice reserves priority for the dealings specified in it for a prescribed length of time. While a priority notice is in force no other dealings can be registered ahead of dealings listed in the priority notice to be lodged.

**Clause 68            Regulation 21 substituted**

The existing Regulation 21 created inconsistency and duplication with the existing power of the Recorder under section 169A of the *Land Titles Act 1980* to approve forms for use. This Regulation carved out applications under section 100, 103(2) and 109(2) of the *Land Titles Act 1980* and a consent to the recording of a highway under section 112(2) of the *Land Titles Act 1980* must be made in a form approved by the Recorder of Titles. It was unnecessary to carve out particular applications required to be made in an approved form as Section 169A provides that the Recorder of Titles may approve forms for use under the *Land Titles Act 1980*.

The existing Regulation 21 is rescinded and a new Regulation 21 substituted to remove any conflict. The new Regulation 21 clarifies that '*an application under the Land Titles Act 1980*' and a consent to the recording of a highway under section 112(2) of the Act must be made in a form approved from time to time by the Recorder.

**Part 10              Local Government (Building & Miscellaneous Provisions) Act 1993**

**Clause 69            Principal Act**

This clause provides that the *Local Government (Building & Miscellaneous Provisions) Act 1993* is the Principal Act for Part 10.

**Clause 70      Section 244 amended (Registering preservation order)**

The amendment to section 244(2) of the *Local Government (Building & Miscellaneous Provisions) Act 1993* amends the obligation of the Recorder of Titles where a preservation order is made under the *Land Titles Act 1980*. When a council lodges a sealed copy in the office of the Recorder of Titles, the obligation of the Recorder of Titles to enter this information on a paper grant or certificate of title is instead changed to require the Recorder to 'endorse the memorial on the folio of the Register, under the *Land Titles Act 1980*, for the land'.

The 'Register' is the register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*.

**Part 11      Local Government (Highways) Act 1982 amended**

**Clause 71      Principal Act**

This clause provides that the *Local Government (Highways) Act 1982* is the Principal Act for Part 11.

**Clause 72      Section 60 amended (Restrictive covenants for benefit of highway)**

The amendment to section 60(5) of the *Local Government (Highways) Act 1982* provides that the obligation of the Recorder of Titles to enter information upon a paper certificate of title is instead changed to require the Recorder to enter the information 'on the folio of the Register for the land, under the *Land Titles Act 1980*, for the land and any folio of the Register under the *Land Titles Act 1980*, for the lease'.

The amendment to subsection 60(5) contemplates that a paperless regime may be implemented in the future. It also contemplates that it is appropriate to record a restrictive covenant on the title to a property, including on any leasehold title, rather than to record the burden of a restrictive covenant on the memorandum of lease document.

The 'Register' is the register of title to land required to be kept and maintained by the Recorder pursuant to section 33 of the *Land Titles Act 1980*.

**Part 12      Neighbourhood Disputes About Plants Act 2017 amended**

**Clause 73      Principal Act**

This clause provides that the *Neighbourhood Disputes About Plants Act 2017* is the Principal Act for Part 12.

**Clause 74      Section 23 amended (Application to Appeal Tribunal)**

The amendments to subsection 23(5)(b) of the *Neighbourhood Disputes About Plants Act 2017* amends the existing section which requires lodgement with an application under that section of 'a copy of a certificate of title in relation to the affected land'. The amendment provides that a copy of *'the folio of the Register, under the Land Titles Act 1980, for the affected land'* is instead required to be lodged.

This contemplates that a paperless title regime may be implemented in the future and that a paper certificate of title may not be issued. It also more contemplates that in practice, copies of searches of a folio of the Register (i.e. a title search), are likely being lodged with applications rather than a copy of a 'certificate of title'.

**Part 13                    War Service Land Settlement Act 1950 amended**

**Clause 75                Principal Act**

This clause provides that the *War Service Land Settlement Act 1950* is the Principal Act for Part 13.

**Clause 76                Section 39D amended (Issue of certificates of title)**

The amendment to section 39D is to substitute the word 'shall' for 'may' in the context of the obligation of the Recorder of Titles to issue a certificate of title. This wording change contemplates a future move to a paperless certificate of title regime in the future.

**Clause 77                Section 39E amended (Registration of grants)**

This section is amended by adding the words 'if any' in the context of there being a grant or any certificate of title for the land to be delivered to the Recorder for the purposes of registering a dealing. The addition of the words *'if any'* in subsection 39E after the words 'grant' and 'certificate of title' also contemplate that a paper certificate of title may not have been issued or that paper documents are not required to be delivered to the Recorder.

**Clause 78                Section 39J amended (Release of seignior)**

Subsection 39(2) is amended by adding the words *'if any'* in the context of there being a grant or any certificate of title for the land to be delivered to the Recorder for the purposes of registering a dealing. The addition of the words *'if any'* also contemplate that a paper certificate of title may not have been issued or that paper documents are not required to be delivered to the Recorder.

The amendment to subsection 39J(2) by adding the words *'or her'* after 'him' appropriately broaden gender references to the tenant.

**Part 14                    Wellington Park Act 1993 amended**

**Clause 79                Principal Act**

This clause provides that the *Wellington Park Act 1993* is the Principal Act for Part 14.

**Clause 80**                    **Schedule 2 amended (Registration of Proclamations)**

Schedule 2 is amended by inserting of the words '*if any*' after reference to the 'certificate of title', 'grant' or 'duplicate registered dealing', in 1(3) and 4(3). The addition of the words '*if any*' contemplate a future move to a paperless title regime where there is no 'certificate' of title or that a duplicate registered dealing does not exist.

**Part 15**                    **Concluding Provision**

This clause provides that this Act is repealed n the first anniversary of the day on which the last uncommenced provision of this Act commenced.

**Clause 81**