

CLAUSE NOTES

Land (Miscellaneous Amendments) Bill 2021

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 notices)

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).

The amendment also creates gender neutral language in that section by replacing references to the statutory position of the Recorder of Titles as '*him*' and changing them to '*the Recorder*'.

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 removal of the word '*him*' and replacement with the words '*the Recorder*' in subsection 18B(4) removes reference to the gender of the statutory position of the Recorder of Titles and creates gender neutral language.

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 4 amended (Appointment of Recorder, &c.)

This section is amended by creating gender neutral language. Subsection 4(2) is amended by omitting the word, 'he' and replacing it with the words, 'the person'. This amendment creates gender neutral language when referring to the statutory role of the Recorder of Titles.

Clause 22 Section 7 amended (Documents purporting to be sealed or signed by Recorder or Deputy Recorder, &c., to be received in evidence)

This section is amended by creating gender neutral language regarding documents that may be sealed by the Recorder of Titles. The section is amended by omitting the words, 'his seal of office or signed by him', and substituting with the words, 'the Recorder's seal of office or signed by the Recorder'.

Clause 23 Section 8 amended (Facsimile signature of Recorder or Deputy Recorder, &c.)

This section is amended by creating gender neutral language throughout by removing the unnecessary reference to gender and the word, 'himself' in paragraph (a), omitting the words, 'his signature', and substituting with the words, 'the signature of the Recorder, the Deputy Recorder, or the Assistant Recorder of Titles' and omitting the word, 'his', second occurring, and substituting with 'the Recorder's, Deputy Recorder's or Assistant Recorder of Titles'.

Clause 24 Section 11 amended (Applications to bring land under this Act)

This section is amended by creating gender neutral language throughout. The words, 'his making' from subsection 11(1)(e) are omitted and substituted with the words, 'the person making'. Subsection 11(2)(b)(i) is amended by omitting the word, 'he', and substituting with the words, 'the tenant for life, or the person having the powers of a tenant for life'. Subsection 11(3) is amended by omitting the words, 'in his possession or under his control' and substituting for the words, 'in the person's possession or under the person's control'.

Clause 25 Section 12 amended (Lodgement of dealings)

This section is amended by creating gender neutral language throughout. For example, multiple use of the word 'he' is replaced with the words, 'the Recorder' in subsections 12(2), 12(3) and 12(4). Subsection 12(1)(a) is also amended by

omitting the words, *'in his opinion, justify him'* and substituting with the words, *'in the opinion of the Recorder, justify the Recorder'*.

Clause 26 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'.

This section is also made gender neutral by omitting from subsection 13(2) the word, *'his'*, and replacing it with the words, *'the Recorder's'*.

Clause 27 Section 14 amended (Caveat forbidding the bringing of land under this Act)

This section is amended by creating gender neutral language throughout. Subsection 14(3)(a) is amended by omitting the words *'his title'* and replacing with the words, *'the caveator's title'* and also replacing the words, *'he has'*, with the words, *'the caveator has'*.

Clause 28 Section 15 amended (Withdrawal of application to bring land under Act)

This section is amended by creating gender neutral language throughout. The word *'his'*, is omitted and replaced with the words, *'the applicant's'*. The word, *'he'*, is omitted and replaced with the words, *'the Recorder'*.

Clause 29 Section 17 amended (Land may be brought under this Act on registration of instruments under the *Registration of Deeds Act 1935*)

This section is amended by creating gender neutral language throughout. The words, *'in his possession or under his control'*, are omitted from subsections 17(1)(d) and 17(1A)(b) and replaced with the words, *'in the person's possession or under the person's control'*. Subsection 17(3) is amended by omitting the words, *'he thinks'* and replacing them with the words, *'the Recorder thinks'*. Subsection 17(3)(b) is amended by omitting the words, *'his custody'* and replacing them with the words, *'the Recorder's custody'*.

Clause 30 Section 18 amended (Land may be brought under this Act upon subdivision)

This section is amended by creating gender neutral language throughout. The word, *'him'*, is omitted and is replaced by the words *'the Recorder'*. The words, *'his discretion'*, are omitted and replaced with the words, *'the Recorder's discretion'*.

Clause 31 Section 19 amended (Land may be brought under this Act at the instance of the Recorder)

This section is amended by creating gender neutral language throughout. References to *'him'* or *'he'* are omitted and substituted with the words, *'the person'* in subsections 19(1), 19(1)(a) and 19(1)(b). Further, references to *'his'* and *'he'* in subsections 19(1)(b)(ii) and 19(1)(c) are omitted and replaced with the words, *'the person'*. References to the statutory position of the Recorder of Titles have also been amended to use gender neutral language in subsections 19(2) and (3) to remove the words, *'he'* or *'his'*, and replace them with *'the Recorder'* or *'the Recorder's'*.

Clause 32 Section 20 amended (Refusal to comply with notice under section 19; making false or misleading statement, &c.)

This section is amended by creating gender neutral language throughout. The words *'him'* or *'his'* are omitted and substituted with the words, *'the person'* or *'the person's'* in subsections 20(1) and 20(2).

Clause 33 Section 21 amended (Qualified title)

This section is amended by creating gender neutral language throughout. The words *'he'* and *'him'* in subsections 21(1)(a)(i) and (ii) are omitted and replaced with the words, *'the applicant'*. Subsections 21(2)(a) and (b) are amended by omitting the words, *'his estate'* and substituting with the words, *'the registered proprietor's estate'*. Subsection 21(6) is amended by omitting the words, *'him of such evidence of title as he'* and substituting with the words, *'the Recorder of such evidence of title as the Recorder'*.

Clause 34 Section 22 amended (Subsisting estates and interests to be recorded on qualified title)

This section is amended by creating gender neutral language and omitting the word, *'him'*, (being a reference to the statutory position of the Recorder of Titles), and substituting it with the words, *'the Recorder'*.

Clause 35 Section 24 amended (Qualified title may be cancelled or corrected in certain circumstances)

The amendment to 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 creating gender neutral language when referring 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 creates gender neutral language. 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. Subsection 24(3) is also amended by omitting the word 'he' and replacing it with the word, 'the person'.

Clause 36 Section 27A amended (Certain Crown land may be brought under this Act)

This section is amended by creating gender neutral language throughout. Subsections 27A(3)(c) and 27A(4) are amended by replacing the word, 'he' with the words 'the Recorder'. Subsection 27A(6)(a) is also appropriately amended by omitting the words, 'he or she' and substituting with the words, 'the Director-General of Lands'.

Clause 37 Section 28 amended (How certain estates and interests dealt with when land brought under this Act)

This section is amending by creating gender neutral language throughout. Multiple references to the statutory position of the Recorder of Titles as 'he', 'him' or 'his' are omitted and replaced with the gender neutral expression of 'the Recorder' or 'the Recorder's' (i.e. subsections 28(2), 28(2)(b), 28(4)(a)(ii), 4(a)(iii), 28(10), 28(11)(a), 28(13)(a)). Subsection 28(4)(c) is amended to replace the word, 'him' with the words, 'the proprietor'. Subsection 28(13)(a) is amended by omitting the words, 'his legal practitioner for him and on his behalf', and substituting for the words, 'the person's legal practitioner for the person and on the person's behalf'.

Clause 38 Section 30 amended (Disposal of antecedent documents of title)

This section is amending by creating gender neutral language throughout. The word, 'he', is omitted from subsection 30(1)(a) and is replaced by the words, 'the Recorder'. Subsection 30(1)(b)(i) is amended by omitting the words, 'his office', and replacing with the words, 'the office of the Recorder'. Subsection 30(3) is amended by omitting the words, 'he intends', and replacing them with the words, 'the person intends'.

Clause 39 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).

This section is also amended by creating gender neutral language where the word, 'his', in subsections 31(1) and (2) is omitted and replaced with gender neutral words such as, 'the person', or 'the person's' or 'the proprietor's' as shown.

Clause 40 Section 32 amended (Land may be described by verbal description if no survey available, &c.)

This section is amended to create gender neutral language when referring to the statutory position of the Recorder of Titles. The word, 'he', in each subsection of section 32 is omitted and replaced with the words, 'the Recorder'.

Clause 41 Section 33 amended (The Register, certificates of title and registration)

This section is amended to create gender neutral language. Multiple gender references to the Recorder of Titles using the words 'he', 'his' or 'him', are omitted and replaced with the words, 'the Recorder' or 'the Recorder's' (subsections 33(6),(11),(13),(14)(16),(17),(18) and (18(b))).

Clause 42 Section 34 amended (Power of Recorder to make transparencies)

This section is amended to create gender neutral language. The words, 'his' and 'he' in subsections 34(1)and(2) are omitted and replaced with the words, 'the Recorder' or 'the Recorder's' as set forth in the amendment where there is a reference to the statutory position of the Recorder of Titles. The words, 'he intends', are omitted from subsection 34(2)(a) and replaced with the words, 'the person intends', to also create gender neutral language when referring to a person.

Clause 43 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) and substitutes new subsections (1), (1A) and (1B) which also create ease of reading as to process and requirements. The amendments 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' and if the Recorder issues a new certificate of title, that the Recorder must record on the relevant folio of the Register hat the Recorder has done so pursuant to this section.

The section is also amended to create gender neutral language. The words 'him', 'his' and 'he' in relation to statutory position of the Recorder of Titles are omitted

from subsections 35(3) and 35(5) and replaced with the words, *'the Recorder'* or *'the Recorder's'* as shown in the amendment.

Clause 44 Section 37 amended (Copies of public records)

This section is amended to create gender neutral language by substituting the word, *'his'* in subsection 37(1) with the words, *'the Recorder'*.

Clause 45 Section 40 amended (Estate of registered proprietor indefeasible)

This section is amended to create gender neutral language. The word, *'he'* is omitted from subsection 40(3)(a) and replaced with the words, *'the person'*. The words, *'his estate'* are omitted from subsection 33(4) and replaced with the words, *'the estate of the registered proprietor'*.

Clause 46 Section 42 amended (Purchasers and mortgagees protected)

This section is amended to create gender neutral language. The word, *'he'*, is omitted and substituted with the words, *'the purchaser or mortgagee'*. The word, *'his'*, is omitted and substituted with the words, *'the purchaser's or mortgagee's'*.

Clause 47 Section 48 amended (Dealings to be attested; order of registration; priority of dealings)

This section is amended to create gender neutral language. The word, *'he'* and *'him'*, are omitted in subsections 48(2), 48(3) and 48(6) and replaced with the words, *'the Recorder'*.

Clause 48 Section 48B amended (Authority for lodgement by electronic process)

This section is amended to create gender neutral language. The words, *'he or she'*, are omitted and substituted with the words, *'the person'*.

Clause 49 Section 49 amended (Instruments not effectual until registered)

This section is amended to create gender neutral language. The words, *'he is himself'*, are omitted from subsection 49(2) and replaced with the words, *'the person is'*.

Clause 50 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'.

This section is also amending by creating gender neutral language throughout. There are multiple changes to the reference to the statutory position of the

Recorder of Titles by removing the words 'his', 'himself', 'him' or 'he' (where the reference is one to the Recorder of Titles) and replacing with the words 'the Recorder' or 'the Recorder's' as shown in the amendments to subsections 50(2)(b), 50(3), 50(5), 50(6), 50(7), 50(8), 50(9), and 50(12). Amendments are also made to change the reference to a party or person lodging documents to remove the word 'his', and replace with the words, 'the person's' in subsections 50(4) and 50(12). An amendment has also been made to section 50(11) to remove the words, 'he or she', and replace them with the words, 'the Recorder'.

Clause 51

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 'he' when describing the Recorder is also amended to say, 'the Recorder', creating gender neutral language.

Existing subsections 51(6) and (7) are replaced by new subsections. The effect of the amendments to those subsections is to create gender neutral language when referring to the statutory position of the Recorder of Titles to remove the gender references to the Recorder 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 52

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 current 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 provides certainty as to expiration particularly in the case of multiple priority notices on one title.

This section is further amended by creating gender neutral language. Subsection 52(9) is amended by omitting the word, 'he' and replacing it with the words, 'the person'. Subsection 52(11) is amended by omitting the words, 'satisfy himself' and replacing them with the words, 'be satisfied'. Subsections 52(13) and (15) are amended by omitting the word, 'him' and replacing with the words, 'the judge'. Subsection 52(16) is amended by omitting the word, 'his' and replacing with the words, 'the Recorder's'.

Clause 53

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 54 Section 53 amended (Dealing may be registered prior to grant from the Crown)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles. The words, *'his office'*, are omitted and substituted with the words, *'the office of the Recorder'* in subsection 53(3).

Clause 55 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 create gender neutral language by omitting the word *'he'* and replacing it with the words to *'the Recorder'*. The amendments also improve 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 56 Section 56 amended (General covenants implied in dealings)

This section is amended to create gender neutral language. The words, *'he will'* are omitted and replaced with the words, *'the party will'*.

Clause 57 Section 58 amended (Transfer)

This section is amended to create gender neutral language. The words *'his estate'* are omitted and replaced with the words, *'the registered proprietor's estate'*.

Clause 58 Section 59 amended (Transferee of land subject to mortgage or encumbrance to indemnify transferor)

This section is amended to create gender neutral language. The word, 'he', is omitted in Sections 59(a) and (b) and replaced with the words, 'the transferee'.

Clause 59 Section 60 amended (Transfers of mortgages, encumbrances, and leases)

This section is amended to create gender neutral language. Section 60(1) is amended by omitting the words, 'he would', and replacing them with the words, 'the transferee would'.

Clause 60 Section 61 amended (Sale under writ)

This section is amended by substituting the time period in each of subsections 61(2), 61(4), 61(5)(a) and 61(8) of '3 months' with a time period of '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 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.

Subsection 61(4) is amended by omitting the word, 'his' and replacing it with the words, 'the Recorder's', and subsection 61(7) is amended to remove the word, 'he' and replace it with the words, 'the Recorder'. These amendments create gender neutral language regarding reference to the statutory position of the Recorder of Titles.

The amendment to subsection 61(6) by omitting, 'his or her' and substituting with the words, 'the person's', also creates gender neutral language when referring to a person.

Clause 61 Section 62 amended (Dealings with lands of the Crown under Act)

This section is amended by creating gender neutral language. The words, 'his department', are omitted and replaced with the words, 'the department of the Director-General of Land'.

Clause 62 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 40:40:20 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 cases 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 remaining 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 the right 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 as a result of the actions of one owner, resulting in unintended consequences.

Subsection 63(1) is also amended to create gender neutral language by replacing the word 'his' and substituting it for the words, 'the joint tenant's', when referring to a party to a joint tenancy in that subsection.

Clause 63

Section 67 amended (Powers in lessor)

This section amends subsection 67(b) by replacing the time period in subsection 67(b) of '3 months' with a time period of '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'.

This section is also amended to create gender neutral language by replacing the word, 'him', in paragraph (a) with the words, 'the lessee'; replacing the word, 'his', for the words, 'the lessee's', and omitting from paragraph (a) the words 'may by himself or his agents' and substituting, 'may, or the lessor's agents may'.

Clause 64 Section 68 amended (Recovery of possession and determination of lease)

This section is amended to create gender neutral language. Subsection 68(1) omits the word 'his' and replaces it with the words, 'the Recorder's' and omits from paragraph (b), the words 'by himself or tenants', and replaces them with the words 'personally or by tenants'.

Clause 65 Section 69 amended (Provisions of Act as to leases to apply, with necessary modifications, to subleases)

This section is amended to create gender neutral language. Section 69(3) is amended by omitting the word, 'his' and substituting the words, 'the sublessor's'.

Clause 66 Section 70 amended (Extension or variation of lease)

This section is amended to create gender neutral language. The words, 'he has' are omitted from section 70(6) and replaced with the words, 'the mortgagee, or encumbrancee, respectively, has'.

Clause 67 Section 74 amended (Covenants implied in every memorandum of mortgage)

This section is amended to create gender neutral language by omitting the word, 'he', in the context of the mortgagor, and replacing it with the words, 'the mortgagor'.

Clause 68 Section 77 amended (Procedure in case of default)

This section is amended by substituting the time period in subsection 77(1) of 'one month' with a time period of '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'.

This section is also amended by creating gender neutral language by omitting from subsection 77(4) the words, 'he does', and substituting it for the words, 'the trustee does'.

Clause 69 Section 78 amended (Power to sell and appropriation of proceeds)

This section is amended to create gender neutral language. Subsection 78(1)(a) is amended to omit the word, 'he', and replace with the words 'the mortgagee, or encumbrance, respectively'. A similar change is made to subsection 78(2)(d) were

the words, 'he were', are omitted and replaced with the words, 'the mortgagee, or encumbrancee respectively, were'.

The word 'him', is omitted from subsection 78(4) and replaced with the words 'the purchaser's'. A similar change is made to subsection 78(5) by omitting the word, 'him', and replacing with the words, 'the purchaser'.

Subsection 78(10)(a) is amended to omit the words, 'he may', and substitute them with the words, 'the mortgagee, or encumbrancee, respectively may'. The words, 'he is to satisfy claims of persons who have lodged caveats, he', are omitted and replaced with the words, 'the mortgagee or encumbrancee is to satisfy claims of persons who have lodged caveats, the mortgagee or encumbrancee, respectively', in subsection 78(11).

Clause 70 Section 79 amended (Power of mortgagee to sell or lease mortgaged land and other land together)

This section is amended to create gender neutral language. Section 79(2) is amended by omitting the word, 'his', and replacing it with the words, 'the mortgagee's'.

Clause 71 Section 83 amended (Mortgagee or encumbrancee may distrain for arrears or money secured under mortgage or encumbrance)

This section is amended to create gender neutral language. The words 'his tenant', are omitted and replaced with the words, 'the mortgagee's or encumbrancee's tenant'.

Clause 72 Section 84 amended (Mortgagee or encumbrancee of leasehold entering into possession of rent and profits becomes liable to lessor)

This section is amended to create gender neutral language. The word, 'him', is omitted and replaced with the words, 'the mortgagee, encumbrancee or person, respectively'.

Clause 73 Section 85 amended (Mortgagee may apply to Recorder for order for foreclosure)

This section is amended by omitting the time period in section 85(1) and 85(2)(a) of '6 months' and substituting a time period of '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 74 Section 86 amended (Order for foreclosure)

Subsection 86(1) is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words, *'The Recorder, if he does not reject an application under section 85, shall'* are omitted and replaced with the words, *'If the Recorder does not reject an application under section 85, the Recorder shall'*.

Subsection 86(1) is further amended by substituting the time period of 'one month' with a period of '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'.

Subsection 86(2) is also amended to create gender neutral language and replace the word, *'him'*, with the words, *'the mortgagor'*.

Clause 75 Section 87 amended (First mortgagee or encumbrancee to produce title for registration of 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 contemplates that there might not be a duplicate registered dealing, noting that it is not a requirement to lodge documents in duplicate.

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

Further, the replacement of the words, *'he holds the certificate of title or duplicate registered dealing'*, with, *'the first mortgagee or encumbrancee, respectively, holds the certificate of title, if any, or the duplicate registered dealing, if any'*, creates gender neutral language regarding the first mortgagee or encumbrancee.

Clause 76 Section 88 amended (Variation of terms of mortgage and encumbrance)

This section is amended by creating gender neutral language. The words, *'he'* and *'him'* in subsection 88(3) are omitted and replaced with the words, *'the subsequent mortgagee or encumbrancee'* respectively.

Clause 77 Section 90 amended (Recorder may facilitate discharge of mortgage in certain cases)

This section is amended by creating gender neutral language. Multiple references to *'he'*, *'him'* and *'his'*, regarding the statutory position of the Recorder of Titles are omitted and replaced with the words, *'the Recorder'* or *'the Recorder's'* (subsections 90(1), 90(2), 90(2)(a), 90(2)(b) and 90 (5)). Subsection 90(5) is also amended to omit the words, *'satisfy himself'* and replacing them with the words, *'be satisfied'*, (in the context of a reference to the Recorder being satisfied).

- Clause 78 Section 91 amended (Application for order declaring mortgage, &c., discharged)**
- This section is amended by creating gender neutral language. The words, *'he may'*, are omitted in subsection 91(1) and replaced with the words, *'the Recorder may'*. This section relates to where an application may be made to the Recorder to declare a mortgage discharged. The existing subsections 90(3) and (4) are omitted and replaced by new subsections with the same numbering. The purpose is to reword the existing sections to create gender neutral language throughout given multiple references to *'him'* or *'he'* in both subsections.
- Clause 79 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'* contemplates 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 omitting the word, *'he'*, and replacing it with the words, *'the Recorder'*, which creates gender neutral language in reference to the statutory position of the Recorder of Titles.
- Clause 80 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 81 Section 97 amended (Disclaimer or lease under Commonwealth Act)**

This section is amended by creating gender neutral language. The words, *'his application'* are omitted from subsection 97(3)(b) and replaced with the words, *'the lessor's application'*. The word *'himself'*, is omitted from subsection 97(6)(b) and substituted with the words, *'the mortgagee'*.

Clause 82 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 replaced with a time period of '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'.

This section is also amending by creating neutral gender neutral. The word *'he'*, is omitted from subsection 98(1)(b)(ii) and replaced with the words, *'the applicant'*. Paragraph (b) of subsection 98(2) is omitted and replaced with a new paragraph to create gender neutral language by replacing the words *'that he believes himself to be entitled to the estate in that land'*, with the words, *'that the applicant believes the applicant to be entitled to the estate in that land'*.

Subsection 98(4) is amended by omitting the word *'him'* and replacing it with the words, *'the applicant'*.

The existing subsection 98(5) is omitted and replaced with new subsections 98(5)(a) and (b). The new subsection 98(5)(b) addresses confusion around the interpretation of *'unless in the interval'* regarding advertising and service of notice and when the Recorder can proceed with registering an application as appears in the existing section.

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.

The amendments to subsection 98(5) also create gender neutral language.

Clause 83 Section 99 amended (Transmission on death to personal representative)

This section is amended by creating gender neutral language. The word, *'him'*, is omitted in subsection 99(1)(b) and replaced with the words, *'the applicant'*.

Clause 84 Section 100 amended (Registration of survivor of joint proprietors, &c.)

This section is amended by creating gender neutral language. The word, *'his'* is omitted and replaced with *'the Recorder's'* where the reference is to the Recorder of Titles. Further, the words, *'a person registered with him'* are omitted from

paragraph (a) and replaced with the words, '*another person registered with the person*', in the context of the death of a joint tenant and the entitlement of a surviving joint tenant.

Clause 85 Section 101 amended (Re-entry determining fee)

Subsection 101(1) is amended by omitting the word '*his*' and replacing it with the words '*the Recorder's*' to create gender neutral language regarding 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 86 Section 102 amended (Covenants which run with freehold registered land)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles. The word, '*he*' is omitted from subsection 102(6) and replaced with the words, '*the Recorder*'.

Clause 87 Section 103 amended (Effect of identity of parties to covenant)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles. The word, '*his*', is omitted from subsection 103(2) and replaced with the words, '*the Recorder's*'.

Clause 88 Section 105 amended (Creation of easements)

This section is amending by creating gender neutral language. Subsection 105(2) is amended by omitting the words '*he*' and replacing with the words, '*the person*' in paragraph (a), and omitting the words, '*by him*', and replacing with the words, '*by the proprietor*', in paragraph (b).

Clause 89 Section 107 amended (Profits a prendre)

This section is amended by creating gender neutral language. Section 107(1)(b) is amended by omitting the word, '*him*', and replacing with the words, '*the grantee*'.

Clause 90 Section 108 amended (Release and extinguishment of easements and profits a prendre)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles in section 108(2). The words, '*his own*', are replaced with the words, '*the Recorder's own*', and the words, '*his satisfaction*', are replaced with the words, '*the Recorder's satisfaction*'.

Clause 91 Section 109 amended (Effect of unity of seisin on registered easements, &c.)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles in section 109(2). The word, 'his', is omitted and replaced with the words, 'the Recorder's'.

Clause 92 Section 110 amended (Rectification of easements, &c., in old subdivisions)

This section is amended by creating gender neutral language to the statutory position of the Recorder of Titles. Multiple references to the statutory position of the Recorder of Titles as 'he', 'him' or 'his' are omitted and replaced with the words, 'the Recorder' or 'the Recorder's' as shown by the amendments to subsections 110(2), 110(4), 110(7)(a), 110(7)(b), 110(7)(b)(ii), 110(10)(f), 110(11) and 110(13). Sections 110(7)(b)(i) and 110(7)(b)(ii) are also amended by omitting the words, 'his proposed' and 'his new' respectively and replacing them with the words, 'the proposed' and 'the Recorder's new', respectively.

Clause 93 Section 112 amended (Recording of highways)

This section is amended by creating gender neutral language. The word, 'he', is omitted from subsection 112(2) and replaced with the words, 'the Recorder'. The word, 'he', is omitted from subsection 112(5) and replaced with the words, 'the registered proprietor', and subsection 112(4) is amended by omitting the words, 'his grant or certificate of title', and replacing with the words, 'the registered proprietor's grant, or certificate of title'.

Clause 94 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.

This section is also amended to create gender neutral language. The word, 'him', is omitted in subsection 126(3) and replaced with the words, 'the Recorder'. Subsection 126(5) is amended by omitting the words, 'he shall give notice that he', and replacing with the words, 'the Recorder shall give notice that the Recorder'.

Subsections 126(5A)(b) and 126(5B) are also amended to replace reference to 'him or her' and 'he or she', respectively, with the words, 'the Recorder'.

Clause 95 Section 131 amended (Application of *Settled Land Act 1884* to land held under this Act)

This section is amended to create gender neutral language. References in subsections 131(1)(d) and (g) to 'he' or 'his' are omitted and substituted with the words, '*the registered proprietor*' or the '*registered proprietors*' within the context of the section as shown by the amendments.

Clause 96 Section 132 amended (Trusts)

This section is amended to create gender neutral language. References to 'he' in subsections 132(2)(b) and 132(3)(a) are omitted and replaced with the words, '*the person*' and '*the proprietor*', respectively within the context of the sections as shown by the amendments. Subsection 132(3) is amended by omitting the word, 'his', and replacing it with the words, '*the Recorder's*' in relation to the statutory position of the Recorder of Titles. Subsection 132(5) is omitted and replaced with a new subsection 132(5) to create gender neutral language. Additional words after 'registered proprietor' are added for clarity ...'*a registered proprietor of an estate or interest who is a trustee of the estate or interest...*'

Clause 97 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) to remove and replace it with a new paragraph (a) provides for the inclusion of the words, '*by the caveator, or on the caveator's behalf...*' Making 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'.

This section is further amended to create gender neutral language by omitting the word, 'his' and substituting for the words, 'the caveator's' in subsection 133(2), omitting reference to the Recorder as 'he' and replacing with the words, 'the Recorder' in subsection 133(3), replacing 'his address' with 'the caveator's address' in subsection 133(4), amending subsection 133(5)(b)(i) by omitting 'his personal', with the words, 'the caveator's personal' and omitting 'satisfy himself' and replacing with the words, 'be satisfied'.

Clause 98 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.

This section also creates gender neutral language by omitting from subsection 134(8) the words, 'he or she' and replacing them with the words, 'the judgement creditor'.

Clause 99 Section 136 amended (Lapsing of caveat on registration of dealing)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles. Section 136(1) is amended by omitting the word, 'his', and substituting the words, 'the Recorder's'.

Clause 100 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*' (after the word, 'lodged'), makes 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. The 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.

The 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 101 Section 137 amended (No registration affecting land in respect of which caveat lodged)

This section is amended by creating gender neutral language regarding the statutory position of the Recorder of Titles. The word, '*him*', is omitted in subsection 137(3)(c) and replaced with the words, '*the Recorder*'.

Clause 102 Section 138 amended (Compensation for lodging caveat without sufficient cause)

This section is amended to create gender neutral language. The word, '*him*', is omitted and substituted with the words, '*the judge*'.

Clause 103 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.

The section is further amended to create gender neutral language throughout where, in the appropriate context, '*him or her*' or '*his or her*', is replaced with the words '*the Recorder*' or '*the Recorder's*', and references to '*he or she*' or '*him or her*', in relation to a person, are replaced with the words, '*the person*' or '*that person*', in the appropriate context.

Clause 104 Section 138B amended (Recorder to carry out order of Supreme Court vesting trust estate)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words *'he or she'* in subsection 138B(1) are substituted with the words, *'the Recorder'*.

Clause 105 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' with the time periods of '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'.

This section is further amended to create gender neutral language. Multiple references to the Recorder of Titles, using the expressions, *'he or she'* or *'his or her'*, or *'him or her'* are omitted and replaced with the words, *'the Recorder'*, or *'the Recorder's'* in the context shown by the amendments to subsections 138D(1), 138D(4)(b), 138D(5), 138D(9) and 138D(10)(a).

Reference to *'his or her'* is omitted in subsections 138D(1)(a) and 138D(1)(c) and replaced with *'the registered proprietor's'*.

Clause 106 Section 138G amended (Interpretation)

This section is amended to create gender neutral language. The words, *'he or she'*, are omitted in subsections 138G(2)(a), 138G(2)(b), 138G(3)(a) and replaced with the words, *'the person'*. A similar amendment is made to subsections 138G(2)(b), 138G(3), 138G(3)(b) and 138G(3)(c) where the words, *'his or her'*, are omitted and replaced with the words, *'the person's'*.

Clause 107 Section 138J amended (Acquisition of easements by possession)

Section 138J(3)(c) is amended by substituting the time period of '6 months' with a time period of '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 108 Section 138K amended (Applicant to notify owner of servient tenement)

This section is amended to create gender neutral language. The words, *'he or she'*, are omitted and substituted with the words, *'the applicant'* in subsection 138K(1). The words, *'he or she'* in subsection 138K(4) are omitted and substituted with the words, *'the Recorder'*.

Clause 109 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*'.

The section is also further amended to create gender neutral language by omitting in subsection 138L(1)(a) the words, '*he or she*', and substituting with the words, '*the applicant*'. Subsection 138L(3)(b) is amended by omitting the words, '*he or she*', and substituting the words, '*the Recorder*'. Further, subsection 138L(1)(e) is amended by omitting the words, '*his or her*', and substituting with the words, '*the owner's*'.

Clause 110 Section 138M amended (Tenants in common)

This section is amended to create gender neutral language. The words, '*he or she*', are omitted and substituted with the words, '*that applicant*'.

Clause 111 Section 138P amended (Character of easement)

This section is amended to create gender neutral language. Subsection 138P(2) is amended by omitting the words, '*he or she*', and substituting with the words, '*the person*'.

Clause 112 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.

This section is further amended to create gender neutral language regarding the statutory position of the Recorder of Titles by omitting from paragraph (a) the words, '*he or she*', and replacing them with the words, '*the Recorder*'.

Clause 113 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*' with a time period of '*30 days*', and in subsection 138W(9) the time period of '*two months*' with a time period of '*60 days*'.

This only changes how the time periods are expressed, not the periods 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*'.

This section is further amended to create gender neutral language, replacing the words '*him or her*' or '*he or she*' or '*his or her*', with the words, '*the person*' or '*the*

person's, as shown by the amendments in subsections 138W(4) and (5). The gender reference to the statutory position of the Recorder of Titles is now modified to remove the reference to *'he or she'* and *'his or her'*, in subsections 138W(11)(b) and 138W(12) and replacing those references with, *'the Recorder'* and *'the Recorder's'*, respectively.

Clause 114 Section 138X amended (Power of Recorder to make vesting order)

This section is amended to create gender neutral language. The words, *'he or she'* in subsections 138X(3)(a) and 138(5) are omitted and replaced with the words, *'the Recorder'*. The words, *'his or her'*, and *'him or her'*, in subsection 138X(4) are omitted and replaced with the words, *'the registered proprietor's'* and *'the registered proprietor'*, respectively.

Clause 115 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 116 Section 139 amended (Correction of errors)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words, *'him'* in subsection 139(1) and *'he shall'* in subsection 139(2)(a), are both omitted and respectively replaced with the words, *'the Recorder'* and *'the Recorder shall'*.

Clause 117 Section 140 amended (Cancellation of superfluous recordings)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words, *'he considers'* and *'he is'*, are omitted

and respectively replaced with the words, *'the Recorder considers'* and *'the Recorder is'*.

Clause 118 Section 142 amended (Rectification of boundaries, area or position of land)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles in subsections 142(4),(5),(11),(14(j),14(k),(15) and (18)(d). Where the words, *'his or her'* or *'he or she'* appear, they are respectively replaced with the words, *'the Recorder'* or *'the Recorder's'*, as shown by the amendments.

Clause 119 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 120 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 143B(3) and (3) of *'3 months'* with a time period *'90 days'*. This only changes how the time periods are expressed and not the periods 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 121 Section 143I amended (Power of Recorder to rearrange plans)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. Where the words *'him or her'* or *'his or her'* appear in subsections 143I(1) and (2), they are omitted and replaced with the words, *'the Recorder'*, or *'the Recorder's'*, respectively as appears in the Bill.

Clause 122 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'* with a time period of *'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'*.

This section is further amended to create gender neutral language regarding the statutory position of the Recorder of Titles in subsections 144(1)(a), 144(1)(b), 144(1), 144(2) and 144(4) and respectively replacing references to *'his'* or *'he is'* to *'the Recorder's'* or *'the Recorder is'* as appears in the Bill. Subsection 144(2) is

further amended to omit the word *'him'* and replace it with the word, *'the Recorder'*. Subsection 144(1) is also amended to create gender neutral language in the context of a person by omitting the words, *'himself to be'*, and replacing those words with, *'that person to be'*.

Clause 123 Section 145 amended (Action by person claiming as beneficiary may be brought in name of trustee)

This section is amended to create gender neutral language regarding a person and omitting from subsection 145(1), the words, *'his name'*, and replacing those words with, *'the person's name'*. Subsection 145(2) is also amended by omitting the word *'his'* (first occurring) and replacing it with *'the person's'*.

Clause 124 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' with a time period of '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 125 Section 147 amended (Right of mortgagee of lease not to be barred)

Section 147 is amended by substituting the time period of '6 months' with a time period of '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 126 Section 150 amended (The assurance fund)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles and omits from subsection 150(2) the word, *'him'*, and replaces it with the words, *'the Recorder'*.

Clause 127 Section 151 amended (Assurance fund not liable in certain cases)

This section is amended to create gender neutral language and in subsection 151(4)(a) omits the words *'he or she acquired that interest, he or she'*, and substitutes the words, *'the person acquired that interest, the person'*.

Clause 128 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.

This section is further amended to create gender neutral language by amending subsection 152(7) and replacing the words, 'his' or 'him' with the words, 'the person'. Subsection 152(9) is also amended to omit the words, 'he claims before he', and replace with the words, 'the claimant claims before the claimant'.

Clause 129 Section 153 amended (When action may lie against Recorder as nominal defendant)

This section is amended to create gender neutral language and omits from subsection 153(1)(a) the word, 'his' and substitutes it for the words, 'the Recorder's'. Subsection 153(3)(2) is also amended to omit the words, 'he claims before he', and substitutes the words, 'the claimant claims before the claimant'.

Clause 130 Section 154 amended (Date of deprivation in certain cases)

This section is amended to create gender neutral language and omits 'he or his' and replaces those words with 'the first-mentioned person or the first-mentioned person's'.

Clause 131 Section 155 amended (Person sustaining loss may apply for compensation)

This section is amended to create gender neutral language. The word, 'he' in subsection 155(1) is substituted with the words, 'the person'. The words 'his or her', are omitted from subsection 155(2)(a) and replaced with the words, 'the Minister's' and subsection 155(2)(b) is amended by omitting the words 'his or her', and replacing them with the words, 'the Governor's'.

Clause 132 Section 156 amended (Notice of action)

Section 156 is amended by substituting the time period of 'one month' with a time period of '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 133 Section 158 amended (Limitation of actions)

This section is amended to create gender neutral language. The word, 'he', is omitted and replaced with the words, 'the plaintiff'.

Clause 134 Section 160 amended (General powers of Recorder)

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.

This section is further amended to create gender neutral language. References to *'him'* and *'he'* in subsections 160(1),(2),(3) and (4) regarding the statutory position of the Recorder of Titles, are omitted and replaced with the words, *'the Recorder'*.

Subsection 160(5) is amended to omit the words, *'his discretion dispense with the production to him'* and replaced with the words, *'the Recorder's discretion dispense with the production to the Recorder'*. Further, subsections 160(1) and (2) are amended to omit the words *'he is'* and replace them with the words, *'the person is'*.

Clause 135 Section 161 amended (Recorder may state case for Supreme Court)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The word, *'him'*, is omitted and substituted with the words, *'the Recorder'*.

Clause 136 Section 163 amended (Power of Recorder to call in certificate of title, &c., in certain cases)

This section is amended to create gender neutral language. The words *'he'*, and *'him'* in subsections 163(1)(e) and 163(1) respectively are omitted and substituted with the words *'the Recorder'*. Subsection 163(3)(a) is amended by omitting the word, *'him'* and replacing it with the words, *'the person'*. Subsection 163(3) omits the word, *'his'* and replaces it with the words, *'the Recorder's'*.

Clause 137 Section 164 amended (Powers of Court and Recorder)

This section is amended to create gender neutral language. The word, *'he'* is omitted and replaced in paragraph (a) with the words, *'the person'*. The word *'his'*, is omitted and substituted in paragraph (b) with the words, *'the Recorder's'*.

Clause 138 Section 165 amended (Protection of Recorder)

This section is amended to create gender neutral language. References to the Recorder as *'he'* and *'his'* are omitted in subsections 165(1)(c), 165(2) and 165(3) to replace them with the words, *'the Recorder'*. Reference to a person as *'him'* in subsection 165(2) is omitted and replaced with the words, *'the person'* and reference to *'his powers'* in subsection 165(2) are omitted and replaced with the words *'the personal representative's powers'*.

Clause 139 Section 168 amended (Service, &c., of notices)

This section is amended to create gender neutral language. The references to the Recorder of Titles where the Recorder is referenced as 'he' or 'he or she' are omitted and replaced with the words, 'the Recorder', in subsections 168(4),(5) and (6). References to a person by the term 'he' or 'his' are omitted and replaced with the words 'the person', or 'the person's' in subsections 168(1)(a) and 168(1)(b). The word 'he' is also omitted from subsection 168(3) and replaced with the words, 'the proprietor'.

Clause 140 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.

Clause 141 Section 170A amended (Combination of forms)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words, 'his or her' are omitted and substituted with the words, 'the Recorder' in subsection 170A(3).

Clause 142 Section 170B amended (Duty of Recorder to transmit certain information)

This section is amended to create gender neutral language. Subsection 170B(2) is amended to omit the words, 'him or her', and replace them with the words, 'the Commissioner of State Revenue'. Subsection 170B(3) is amended to omit the words, 'him or her', and replace them with the words, 'the Valuer-General'.

Clause 143 Section 172 amended (Transitional provision)

This section is amended to create gender neutral language regarding the statutory position of the Recorder of Titles. The words, *'he or she'* are omitted and replaced with the words, *'the Recorder'*.

Part 9 Land Titles Regulations 2012 Amended

Clause 144 Principal Regulations

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

Clause 145 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 is 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.

Clause 146 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 and a party to a dealing may alternatively 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 amended 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 147 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 a 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 148 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 149 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 150 Principal Act

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

Clause 151 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 152 Principal Act

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

Clause 153 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 Nature Conservation Act 2002 amended

Clause 154 Principal Act

This clause provides that the *Nature Conservation Act 2002* is the Principal Act for Part 12.

Clause 155 Section 32A amended (Amendment of Schedules in *Wildlife (General) Regulations 2010*)

This section is amended by omitting '*Schedules 1, 2, 3, 4, 5, 6 and 7 to the Wildlife (General) Regulations 2010*' and substituting '*any Schedule to regulations made under this Act*'.

These amendments mitigate the need for future amendments to this section through the remaking of regulations as statutorily required and provide for changes to the numbering, omission or inclusion of future schedules.

Part 13 Neighbourhood Disputes About Plants Act 2017 amended

Clause 156 Principal Act

This clause provides that the *Neighbourhood Disputes About Plants Act 2017* is the Principal Act for Part 13.

Clause 157 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 14 War Service Land Settlement Act 1950 amended

Clause 158 Principal Act

This clause provides that the *War Service Land Settlement Act 1950* is the Principal Act for Part 14.

Clause 159 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 160 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 161 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 word 'his' in subsection 39J(2) is replaced with the word 'the tenant's'.

Part 15 Wellington Park Act 1993 amended

Clause 162 Principal Act

This clause provides that the *Wellington Park Act 1993* is the Principal Act for Part 15.

Clause 163 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.

Concluding Provision

Part 16 Repeal of Act

Clause 164 This Act is repealed on the first anniversary of the day on which the last uncommenced provision of this Act commenced.