

# CLAUSE NOTES

## *Land Titles Amendment Bill 2018*

Clause 1      **Short Title**

Clause 2      **Commencement**

This clause provides for commencement on the day on which the Act receives Royal Assent.

Clause 3      **Principal Act**

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

Clause 4      **Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)**

Section 146 outlines a process by which a mortgagee, encumbrancee or lessor may obtain possession of their proprietary interest in certain cases.

Under section 146(1) a mortgagee, for example, can apply to the Supreme Court for an order for possession of the premises where the mortgagor is in default in the payment of any money secured by the mortgage. Encumbrancees and lessors can also make applications under this section.

This clause amends section 146(1) of the Principal Act by clarifying that the expiry of the term of lease relates to the premises to which the terms of the lease apply.

This clause also amends section 146 of the Principal Act by removing the requirement for a summons to be issued under subsection (2) when an application is lodged under subsection (1).

Whilst the requirement to issue a summons has been removed, the application process under section 146 remains. Minor amendments have been made to various subsections to reflect that the summons process has been removed.

Subsection 4 is associated with issuing a summons and has been omitted

Subsection (5) is amended by removing the references to subsection (4), which has been omitted, and inserting a reference to the application under subsection (1) to replace the reference to a summons.

**Clause 5 Section 148 amended (Right of mortgagor or encumbrancer tendering principal, &c., and paying same to the Treasurer to obtain discharge of mortgage, &c.)**

Section 148(1) states that where a mortgagee or encumbrancee has applied for an order for possession under section 146, the mortgagor or encumbrancer may pay off the mortgage or encumbrance before possession is given.

If the mortgagee or encumbrancee refuse to accept it, the mortgagor or encumbrancer may pay the amount to the Treasurer which is also deemed to discharge the debt owing.

This clause amends subsection (5) by removing the references to the summons referred to in section 146(2) which has been omitted, and inserting a reference to the order made under section 146(5) specifying the day on which possession is to be given.

This clause also amends section 148(1) of the Principal Act by clarifying that the order being made relates to the land subject to the mortgage or encumbrance.

**Clause 6 Repeal of Act**

This clause provides that this Act is repealed on the three hundred and sixty fifth day from the day on which it commences.