

Land Titles Amendment Bill 2012

CLAUSE NOTES

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 3 amended (Interpretation)

This clause amends section 3(1) of the Principal Act by:

(i) inserting the definition of ‘electronic communication’

This clause adds a definition of ‘electronic communication’ in preparation for national electronic conveyancing. In an electronic environment sets of data required to complete a transaction will be lodged and stored in electronic form. The definition adopts the same meaning of ‘electronic communication’ as is in the *Electronic Transactions Act 2000*.

(ii) inserting the definition of ‘electronic dealing’

This clause adds a definition of ‘electronic dealing’ in preparation for national electronic conveyancing.

(iii) amending the definition of ‘encumbrance’

An encumbrance is a charge on land created for the purpose of securing a regular payment such as an annuity, rent charge or sum of money other than a debt. This clause amends the definition of ‘encumbrance’ to extend it to include future or contingent payments in addition to current payments. The addition of future or contingent payments to the amended definition allows for the circumstance where an encumbrancee’s right to an annuity, rent charge or sum of money does not become effective immediately.

(iv) amending the definition of ‘instrument’

To remove any doubt as to whether map or plan includes survey this clause amends the definition of ‘instrument’ to specifically include survey.

(v) inserting the definition of ‘newspaper’

This clause inserts a definition of ‘newspaper’ which excludes a newspaper published solely in electronic form. The Principal Act provides for notice to be provided for certain applications. The introduction of this definition is aimed at ensuring that as far as possible the widest part of the community is notified of an application by ensuring a notice is placed in paper newspapers.

(vi) inserting the definition of ‘office copy’

This clause inserts a definition of ‘office copy’ specifically in relation to an order. Sections 138B and 138C include a requirement for a dealing to be supported by an office copy of an order. In accordance with the definition of ‘office copy’ it

means a copy of an order certified by a legal practitioner, Justice of the Peace, or a Commissioner for Declarations.

Clause 5 Section 11 amended (Applications to bring land under this Act)

This clause amends section 11(1) of the Principal Act. Subsection (1) lists the persons who may apply for land to be brought under the Act. It does not currently allow legal practitioners to apply on behalf of their clients. Paragraph (f) has been added to subsection (1) to provide that legal practitioners may apply in writing on behalf of their clients to bring land under the Act where their client is a person for the purposes of paragraphs (a) to (e).

Similar provision is already made in sections 52(1)(d) and 133(2) of the Principle Act. This will facilitate the conversion of general law land to Torrens title and legislate for what is already done in practice.

Clause 6 Section 13 amended (Notices)

Section 13 provides the notice requirements for a general law possessory application. An applicant is required to post on the land or at such place the Recorder directs and keep posted a notice of the application in the form directed by the Recorder.

The notice requirements for registered land differs from that for a general law possessory application under section 138W(8) in that it requires notice of the application to be advertised in a newspaper published in Tasmania and circulating in the locality in which the land is situated.

This clause amends section 13 of the Principal Act by omitting subsection (1) and substituting it with a new subsection (1).

The substituted subsection (1) has an additional requirement for the advertisement of a notice of application in at least one newspaper published and circulating generally in Tasmania and that is available in the locality in which the land is situated.

Currently notice of the application could be advertised in a local newspaper only, for example the Huon News, which may not provide notice to all interested parties. The requirement for advertising in at least one newspaper published and circulating generally in Tasmania addresses this concern. The three major newspapers being the Mercury, Examiner and Advocate fit this requirement.

In certain circumstances the notice may also be published electronically.

Clause 7 Section 14 amended (Caveat forbidding the bringing of land under this Act)

Section 14 deals with the lodgement of a caveat against an applicant bringing land under the Act. The lodgement of a caveat provides the caveator with an opportunity to obtain a court order or judgment establishing their title to the estate or interest specified in the caveat.

Subsection (2)(b) refers to a judgment or order being obtained from the Supreme Court and subsection (3)(b) refers to an order or injunction of the Supreme Court.

Subsection (3)(a) refers to commencing proceedings in a court of competent jurisdiction.

For consistency with subsection (3)(a) this clause amends subsections (2)(b) and (3)(b) by replacing ‘Supreme Court’ with ‘ court of competent jurisdiction’.

Subsection (4) prohibits the lodgement of a caveat by or on behalf of a person in respect of the same estate or interest as a caveat lodged under this section that has lapsed unless permitted by a Supreme Court order.

This clause further amends section 14 by omitting subsection (4) and substituting a new subsection (4). The new subsection (4) has been included for consistency with section 138F and in addition to the prohibition contained in the current subsection (4) prohibits the renewal of the lapsed caveat.

Clause 8 Section 17 amended (Land may be brought under this Act on registration of instruments under the *Registration of Deeds Act 1935*)

Section 17 provides for the compulsory conversion of general law land to registered land upon lodgement of certain instruments in the Registry of Deeds.

In order to facilitate the conversion process this clause amends section 17(1) by providing that upon lodgement of any instrument in the Registry of Deeds affecting land, for example an assent or reconveyance together with the necessary documentation, will result in that land being converted to Torrens title. So rather than limiting any conversion to only the circumstances in subsections (1)(a) and (b) a new subsection (ba) has been included to encompass any other instrument.

Subsection (1) has been further amended to reflect the omission of subsection (4) and the removal of the reference to an appointed day. The reference to an appointed day has been removed to avoid any question arising as to whether the new requirement in subsection (1) operates retrospectively. It only applies to conversions into the future.

This clause also amends subsection (3) to reflect office practice of the Recorder returning the conveyance, mortgage or forestry right to the custody of the lodging party. It will also apply to other instruments.

All references to the Registrar of Deeds have been replaced with references to the Recorder of Titles for clarity in light of section 7(3) of the *Registration of Deeds Act 1935* which provides that a reference to the Registrar of Deeds in this or any other Act or document shall be read as a reference to the Recorder of Titles.

Subsection (4) has been omitted as it has ceased to have any practical value in that all instruments lodged in the Registry of Deeds will now result in conversion to Torrens title.

Clause 9 Section 19 amended (Land may be brought under this Act at the instance of the Recorder)

Section 19 provides for the Recorder to give notice to a person owning general law land to have that land converted to Torrens title. That is, if the Recorder is aware that a person is the owner of general law land then the Recorder can give

notice to that person who must produce his general law deeds to be converted. This section again facilitates the conversion process and captures general law land which may not be dealt with and thus fall under section 17.

Subsection (3) provides that the Recorder shall attempt to bring all land which is not registered land (other than Crown land) under the Act within 10 years of the appointed day. The period of 10 years has passed.

This clause amends subsection (3) by removing the reference to 10 years after the appointed day.

Clause 10 Section 25 amended (Caution to lapse after 20 years)

This clause amends section 25 to replace references to previously repealed sections 117(4) and 119(4) with reference to the correct sections being sections 138W(4) and 138X(4) respectively.

Clause 11 Section 27A amended (Certain Crown land may be brought under this Act)

Section 27A is a mechanism by which Crown land is brought under the Act. It is used when the Crown is alienating Crown land in fee simple.

Subsection (6) provides that where land is brought under the Act the Director-General of Lands may request the Recorder to note on the relevant folio the limitations, exceptions etc that the land is subject to as the Director-General may require or as is created.

It is currently unclear whether ‘may require or as is created’ extends to the creation of an easement at the same time the land is brought under the Act.

This clause omits subsection (6) and substitutes a new subsection (6) which specifically provides that the Director-General of land can, as part of the process of bringing the land under the Act, create easements under this section.

Subsection (8) is consequently amended to reflect the amendment to subsection (6) and to remedy the omission of covenant from this subsection.

Clause 12 Section 33 amended (The Register, certificates of title and registration)

Section 33 provides for the establishment and maintenance of a titles Register, the registration process, and preparation of certificates of title.

Subsection (6) lists the types of estate or interest in land for which the Recorder may create a folio of the Register. This subsection has been found to be limiting in that new estates or interests in land (for example marine farm leases) are not included in the list.

This clause amends subsection (6) by introducing paragraph (e) and providing the Recorder with the power to create folios of the Register for new estates or interests where the Recorder deems it convenient to do so. The list is intended to be inclusive not exclusive.

The Recorder will only include those estates or interest recognised at law.

Subsection (8) provides that unless otherwise prescribed, when the Recorder creates a folio of the Register a certificate of title to the same land shall be prepared. A precursor to full electronic lodgement of documents will be the removal of paper certificates of title. As a first step in this process this clause amends subsection (8) by replacing ‘he shall’ with ‘the Recorder may’.

The intent of this amendment is to enable the Recorder to determine when a certificate of title is to be prepared. The role of certificates of title as the means of identifying the registered proprietor has been replaced by the existence of an electronic Register. The registered proprietor can now be determined by searching the relevant folio of the Register which is the only current record of estates or interests in land.

With the advent of an electronic Register and the introduction of full electronic lodgement the need for a paper certificate of title wanes.

This also accords with current practice whereby some of the major banks request the Recorder to “hold” the certificate of title of which they are first mortgagee in order not to have to store them.

A person who wants a paper certificate of title will be required to apply in writing to the Recorder of Titles. For example an application may be made after a person has paid out their mortgage and wishes to have a certificate of title to show that they and not the bank own the property.

This clause also amends subsection (10). Subsection (10) currently provides that on the lodgement of a dealing, the Recorder shall number it with a distinctive number, or letter and number. Current practice in the paper system is to provide clients with barcodes on labels which they attach to their dealings prior to lodgement.

To reflect this practice subsection (10) has been amended by replacing ‘shall number it with a distinctive number, or letter and number’ with ‘is to ensure it is marked with a distinctive number, letter or code or marked in some other manner approved by the Recorder’. Subsection (10) has also been amended to provide for any future practice that the Recorder may approve.

The term marked has been included as a preferred term to number, as in the future it may not be a number but some other feature that is used. The clause also widens the options for the Recorder to facilitate electronic lodgement.

Clause 13 Section 36 amended (Searches of public records)

Section 36 defines what records are public records and provides that public records are available for searching during prescribed times, in the prescribed manner and upon payment of the prescribed fee.

As the definition of ‘instrument’ in section 3 has been amended to include ‘survey’ separate from plan or map this subsection has also been amended to specifically include surveys.

Clause 14 Section 40 amended (Estate of registered proprietor indefeasible)

Section 40 provides that the title of a registered proprietor of land is indefeasible

subject to the exceptions listed in subsections (3) and (4).

At the present time a registered proprietor holds his land free from all easements which are not registered on his title, with some exceptions provided for under the Act, including those easements that stem from an Act or operation of the law or statute, and equitable easements.

The exceptions do not include easements legally created under the Act and registered on a folio of the Register, but which are later omitted, for example when a new folio of the Register is issued. That is, the new folio of the Register does not include an easement that was included on the previous folio of the Register.

The Act will be amended to include this circumstance in the list of exceptions. This amendment rightfully protects the interests of a person who has the benefit of a legally created easement which through no fault of their own has been omitted from a folio of the Register.

This clause introduces a new subsection (3)(e)(ib) to deal with this circumstance.

In subsection (3)(h) the reference to the previously repealed section 117 has been replaced with the reference to section 138W.

Clause 15 Section 46 amended (Folio of the Register void in certain cases)

This clause has been amended to update references previously repealed sections 117(3), 119 and 123 with references to sections 138W(4), 138X and 138D respectively.

Clause 16 Section 48 amended (Dealings to be attested; order of registration; priority of dealings)

Section 48 provides for dealings to be attested, determines order of registration where two or more dealings affecting the same land are lodged for registration, and the priority of dealings.

Subsection (3) deals with situations where the same person lodges two or more dealings or where two different persons lodge dealings affecting the same land. It currently provides that the person who lodges the second or subsequent dealing must advise the Recorder in writing the order in which the dealings are to be registered.

The requirement for the second person to advise the Recorder as to the priority of dealings is inconsistent with the underlying principles of the Torrens system by providing them with the opportunity to rearrange priority of dealings lodged.

This clause removes the inconsistency from subsection (3) by removing the ability for the person who lodges the second or subsequent dealing to advise the Recorder in relation to the order of registration. The subsection now provides that the Recorder determines the order of registration which will give effect to the intentions of the parties as expressed in, or apparent to the Recorder, from the dealings.

Clause 17 Section 48A substituted

48A Lodgement of dealings and instruments

Section 48A provides for the lodgement of a priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat by delivery of the original document or by transmission to the Recorder of a copy of the original document, and for their preparation and lodgement in any form other than as a document.

Currently priority notices, withdrawals of priority notice, caveats and withdrawals of caveat are being lodged electronically.

This clause replaces this section to extend the documents permitted to be lodged electronically to include, at the discretion of the Recorder of Titles, all dealings and instruments that can be lodged with the Recorder of Titles under this Act or any other Act.

This amendment facilitates Tasmania's participation in any national electronic conveyancing system.

Clause 18 Section 48B amended (Authority for lodgement by electronic process)

Section 48B provides the authority for lodgement of a priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat otherwise than by production of the original document ie by an electronic process. The procedures to be followed form the basis of an agreement with the Recorder authorising the use of such a process.

Currently priority notices, withdrawals of priority notice, caveats and withdrawals of caveat are being lodged electronically.

This clause amends this section to extend the ability of the Recorder to enter into an Agreement for the lodgement of any dealing or instrument that may be lodged with the Recorder of Titles under the Principal Act or any other Act otherwise than by production of the original document.

Clause 19 Section 48C amended (Lodgement of supporting documents)

Section 48C extends the application of sections 48A and 48B to the electronic lodgement of any document required by the Recorder in support of a priority notice, caveat, plan, withdrawal of priority notice or withdrawal of caveat.

The amendment of section 48C supports the amendments to sections 48A and 48B and now applies to any dealing or instrument lodged in accordance with sections 48A and 48B.

Section 48C has also been amended to authorise the preparation as well as lodgement by electronic means.

Clause 20 Section 50 amended (Dealings not to be registered except in accordance with this Act)

Section 50 provides that dealings are not to be registered except in accordance with this Act and only when the dealing is in accordance with the Act.

Subsection (6) currently provides that where the Recorder corrects a patent error in a dealing lodged for registration that correction is to be by notation in the margin of the dealing.

In practice notations of corrections are not just made in the margin of dealings, and further will not be so in an electronic environment. Accordingly this clause amends subsection (6) by omitting 'in the margin of the dealing'. In effect this amendment provides the ability for the Recorder to determine, depending on the medium, where best to make the notation.

Subsection (11) currently provides that the Recorder shall not register a dealing that is executed or purports to be executed in accordance with a power of attorney unless satisfied that the power of attorney is registered under the *Powers of Attorney Act 2000*.

The *Powers of Attorney Act 2000* recognises the legitimacy of powers of attorney created outside of Tasmania where they have been created in accordance with the laws of the State or Territory of Australia or country, that is foreign powers of attorney. If they have been created in accordance with the relevant laws then under the *Powers of Attorney Act 2000* they can either be taken to be registered in Tasmania for the purposes of that Act or they can be registered under that Act.

The Amendment Bill amends subsection (11) by inserting paragraph (b) which specifically deals with foreign powers of attorney that fall within the meaning of the *Powers of Attorney Act 2000* and treats them the same as powers of attorney created in Tasmania and registered under the *Powers of Attorney Act 2000*.

A new subsection 11A has been inserted which provides that if the Recorder is satisfied that the power of attorney falls under subsection (11) the Recorder can assume that the execution of the dealing is within the powers of the attorney conferred on them by the relevant power of attorney or foreign power of attorney.

Clause 21 Section 51 amended (Recording of dealing on certificate of title &c.)

Section 51(1) requires the certificate of title, grant or duplicate registered dealing to be affected by a dealing to be lodged with the Recorder and if it is not the Recorder cannot register the dealing.

Subsection (2) lists the dealings which can be registered without the certificate of title, grant or duplicate registered dealing to be affected by the dealing being lodged for the purpose of registering that dealing.

This clause amends subsection (2) to include a memorandum of mortgage or a memorandum of encumbrance for a transfer on the exercise of a power of sale by a mortgagee or encumbrancee under section 78 of the Principal Act. When a dealing is registered it is subsequently scanned and then destroyed. A memorandum of mortgage or memorandum of encumbrance contain personal covenants made by the mortgagor or encumbrancer to the mortgagee or encumbrancee in the event that the mortgagor defaults on the mortgage or the encumbrancer is in default of the encumbrance. If such a default occurs in relation to a mortgage, for example, the mortgagee exercises his right of power of sale. In some instances such sale does not recoup all the monies owed to the

mortgage. The mortgagee then has to proceed to sue in respect to the personal covenants in the mortgage and requires the original document for this purpose. A similar process applies for an encumbrancee and an encumbrance.

Subsection (2)(e) has been amended by removing references to the previously repealed sections 119, 120, 121 and 123 and replacing them with references to sections 138A, 138B, 138D and 138X.

This clause inserts subsection (2)(f) to facilitate electronic conveyancing in that where a certificate of title has not been issued a certificate of title will not be required to be lodged with the dealing.

Subsection (4) currently provides that on registering a dealing the Recorder shall certify on the dealing that it has been registered and the date of registration. Further, that certification is conclusive evidence that the dealing was duly registered on that date.

For a paper dealing a stamp is applied confirming registration and the date of registration. The same stamp is applied to the electronic form for dealings lodged through the Tasmanian On-line Land Dealings system.

The stamp is a notation rather than a certification in that it is a notation that the dealing has been registered and the date of registration rather than a certification of registration and the date of registration. It still remains conclusive evidence of registration.

Accordingly, this clause amends subsection (4) by replacing 'certify' with 'note' and 'certification' with 'notation'.

Clause 22 Section 54 amended (Delivery of certificate of title or duplicate registered dealing)

Section 54 sets out to whom the Recorder can deliver a certificate of title or duplicate registered dealing after dealings are registered. Generally the certificate of title or duplicate registered dealing is delivered to the person who lodged it. Section 50 provides that where a requisition is raised it is forwarded to the person who lodged the dealings.

An issue arises as to the powers of the Recorder to deal with a non-lodging party where there is a dispute between a party to a transaction other than the lodging party and the lodging party with the former wanting to either withdraw or deal with the certificate of title or duplicate registered dealing. In practice many such disputes have arisen prompting a tightening of the section.

For example, Bank A is the lodging party with Bank B as the incoming mortgagee. For some reason Bank B does not want to continue with registration of its mortgage and asks the Recorder to withdraw it. Section 50 provides that where a requisition is raised it is forwarded to the person who lodged the dealings. Section 54(1)(a) provides that the Recorder where he considers it proper to do so, may deliver a certificate of title or duplicate registered dealing in his custody to the person by whom it is lodged unless that person has given written instructions to the Recorder to deliver the certificate or duplicate to some other person.

It is, and has always been, Land Titles Office practice to deal only with the lodging party unless authority has been provided in writing by the lodging party to deal with someone else.

This clause amends section 54(2) by replacing an assumption made by the Recorder that the lodging party has authority to lodge, with the lodging party is taken to have the authority to lodge. The effect of this amendment is that a provision based upon an assumption is replaced by a provision based upon a deeming, that is the person had authority rather than the person was assumed to have authority.

Clause 23 Section 58 amended (Transfer)

Section 58 deals with transfers of an estate or interest in land. Subsection (2) establishes the rights and obligations that pass on registration of a transfer.

Subsection (2) currently provides that on registration of the transfer, the estate or interest of the transferor (the current holder of the estate or interest) passes to the transferee (the new owner of the estate or interest) with all rights, powers and privileges belonging or appertaining to that estate or interest.

During the review of the Principal Act it was determined that subsection (2) required clarification regarding the rights and obligations that pass on registration of the transfer to confirm that they included requirements and liabilities related to the transferor. That is, that the transfer of the estate or interest results in transferring both the benefits and the burdens associated with that estate or interest.

For example, the amendment would allow a lessor registered proprietor to sue an assignee of a lease for the existing requirements and liabilities of a lessee.

By inserting ‘requirements and liabilities’ in the list of things that pass on registration of a transfer it clarifies that both benefits and burdens associated with an estate or interest also pass on registration.

Clause 24 Section 61 amended (Sale under writ)

This section provides that a person who has obtained judgment against a registered proprietor may have that registered proprietor’s land sold to satisfy the judgment debt and all expenses.

Subsection (6) states that a person who takes a transfer from the registered proprietor, even if he knows that the writ has been issued, is not bound by any sale under the writ unless and until the writ has been recorded in the Register. That is, that person can have his transfer registered if he lodges it for registration before the writ is recorded in the Register.

The wording of subsection (6) was found to be cumbersome. This clause addresses this issue by substituting a new subsection (6) in the same terms albeit reworded to improve its clarity.

Clause 25 Section 63 amended (Severance of joint tenancy)

Section 63 provides a simple method of breaking a joint tenancy where one joint tenant wishes to break the joint tenancy but another does not.

The registration of the declaration of severance results in the person who executes it henceforth holding his estate as a tenant in common. That is, if A & B were joint tenants then after registration A & B would hold as tenants in common in equal shares.

Problems have arisen, however, whereby the party who is executing the declaration attempts to obtain greater than a half share in the property.

This clause inserts a new subsection (4) which provides that joint tenants become tenants in common in equal shares upon registration of a severance of tenancy. This applies regardless of the number of joint tenants.

Further, a new subsection (5) is inserted which provides that the tenants in common arising out of a severance of joint tenancy can execute a transfer so that they hold the shares in land other than in equal shares. If there are four tenants in common, for example, they may choose to hold the shares as follows: A has a 1/8 share, B has a 2/8 share, C has a 1/8 share and D has a 4/8 share.

Clause 26 Section 71 amended (Folio of the Register for a leasehold estate)

Section 71 deals with the creation of a leasehold estate and subsequent dealings with the lease.

Section 71(1)(a) provides that where a folio of the Register has been created for a leasehold estate the Recorder shall record the creation of that folio on the lease.

However, since automation of the Register the recording has in fact been made on the folio evidencing the lessor's title, the folio of the Register for the leasehold estate, rather than on the lease.

Sections 71(1)(b) and 71(1)(c) provide where dealings with the lease are to be registered. All dealings with the lease are to be registered on the folio of the Register for the leasehold estate.

This clause amends subsection (1) by omitting paragraphs (a), (b) and (c) and substituting new paragraphs (a) and (b) to reflect current practice.

These amendments ensure that a person searching the folio evidencing the lessor's title will see that part or all of the land in that folio has been leased.

Section 71(2) deals with the cancellation of a lease on its determination other than because the time of the lease has expired. It currently provides that the folio of the Register for the leasehold estate is to be cancelled.

This clause amends subsection (2) to provide for cancellation of the edition of the folio of the Register for the leasehold estate as an alternative to cancellation of the folio of the Register for the leasehold estate itself.

This amendment provides for instances where it is only the edition of the folio of the Register for the leasehold estate that is required to be cancelled not the folio of

the Register itself. This is a practical requirement evident from the computerised system when dealing with cancellation of titles.

Clause 27 Section 76 amended (Postponement of mortgages and encumbrances)

Section 76 provides the means whereby a registered mortgage or encumbrance may be postponed to other mortgages or encumbrances.

Interpretation difficulties have, however, been encountered with subsection (2).

This clause amends subsection (2) to make it clearer that where any mortgage or encumbrance is postponed the registered mortgagee or encumbrancee of that mortgage or encumbrance that is postponed must execute the relevant instrument giving effect to the postponement.

For example, Bank A is registered on a title as first mortgagee, and Bank B wishes to replace Bank A as first mortgagee then Bank A must execute the relevant instrument for this to happen.

Clause 28 Section 78 amended (Power to sell and appropriation of proceeds)

Section 78 confers power on the mortgagee or encumbrancee to sell the mortgaged or encumbered land after certain conditions have been satisfied.

Subsection (1) currently refers to ‘one month’ in relation to default in payment or in observance of covenants. This clause amends sub section (1) by replacing ‘one month’ with ‘thirty days’ to clarify that the period is fixed at thirty days as opposed to a calendar month. This also brings the section in to line with other sections in the Act which specify a time period in terms of days rather than months.

The purpose of subsection (2) is to allow the mortgagee or encumbrancee to do what a reasonably prudent owner would do to obtain the best price for the land.

This clause adds to subsection (2) the power for the mortgagee or encumbrancee to enter into Part 5 agreements under the *Land Use Planning and Approvals Act 1993*. Part 5 agreements did not exist in 1980 when the Principal Act was drafted.

Clause 29 Section 102 amended (Covenants which run with freehold registered land)

Section 102 details the nature and effect of covenants which run with freehold registered land.

Subsection (9) requires the Recorder to register the dealing creating a covenant by recording it on the folio of the Register containing the titles of the land burdened by the covenant.

The term ‘containing the titles of the land’ is incorrect. The folio of the Register does not contain the titles of the land rather it is the title of the land. A folio of the Register relates to land itself not to titles of that land. A folio of the Register is a title for land.

By replacing ‘containing the titles of the land’ with ‘for the lands’ this clause ensures the correct term is used.

Clause 30 Section 104A inserted

104A. Discharge of covenants in gross

Currently covenants in gross can only be discharged under section 84C of the *Conveyancing and Law of Property Act 1884*. Section 84C deals with the removal of overriding estates or interests in land. A covenant in gross is an overriding estate or interest in that it can act to limit the use of land affected by that estate or interest.

The process for applying to discharge a covenant in gross under section 84C is lengthy.

This clause provides a simpler alternative mechanism for removing a covenant in gross by inserting a new section 104A enabling an application in a form approved by the Recorder to be made to discharge a covenant in gross. Under this clause the application is to be made by the instrumentality that has the benefit of the covenant in gross.

Clause 31 Section 108 amended (Release and extinguishment of easements and profits a *à prendre*)

Section 108 authorises the form of release of an easement or profit a *à prendre*.

There have been instances where a burdened owner of land has endeavoured to use the section to ‘release’ the easement over his own land.

The section was enacted for a release to be executed by a benefited owner when that owner wanted to give up the easement so that it ceases to exist.

This clause amends section 108(1) to make it clear that it is the dominant (benefited) owner who can release the easement or profit a *à prendre*.

A burdened owner can make an application under section 84C of the *Conveyancing and Law of Property Act 1884* for the release of an easement.

Subsection (2) currently provides for cancellation of a whole easement or profit a *à prendre* but does not provide for cancellation of part only of an easement or profit a *à prendre*. ”Part” can apply to area or a term of condition.

This clause amends subsection (2) to provide for cancellation wholly or partly of an easement or a profit a *à prendre*.

Subsection (3) provides that where it is proved to the satisfaction of the Recorder that any easement or profit a *à prendre* has not been used or enjoyed for 20 years that proof is taken to be conclusive evidence that the easement or profit a *à prendre* has been abandoned.

Objections to applications under section 108 have been in the main based on enjoyment ie the objectors say that they “intend” to use the easement at some stage and are happy to know it is still there, and hence have been able to stop the application from being approved.

To simplify the process the element of intent, ie enjoyment, has been removed and the issue of non-use or use is the sole element of an application/objection.

This amendment removes the subjective element in the assessment of an application or objection.

Clause 32 Section 110 amended (Rectification of easements, &c., in old subdivisions)

Section 110 provides the power for the Recorder to make an order setting up a reasonable scheme of easements for lots in a plan of subdivision, other than a sealed plan under the *Local Government Act 1962* and the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

The section does not provide the power for an order which contains an error to be amended after it is registered in the Registry of Deeds or recorded upon the relevant folio(s) of the Register.

This clause amends section 110 by inserting subsections (13) to (15) which sets out the process by which an order made under section 110 which has been registered can be cancelled and a fresh order made. Subsection (13) provides that the Recorder of Titles may do this on his own motion or on application of an interested person.

Subsection (14) requires that before taking action the Recorder must give notice as if they were making an order under this section.

Subsection (15) provides that a fresh order is taken to be an order made under section 110.

Clause 33 Section 136A inserted

136A. Cancellation of caveat on application of proprietor of estate or interest

Section 136 deals with the lapsing of caveats. It currently provides that a caveat can only lapse on lodgement of a dealing and after application by the registered proprietor.

Currently, upon lodgement for registration of a dealing the registration of which is prevented by a caveat, and upon application of the registered proprietor against whom the caveat was lodged, the Recorder will serve on the caveator a notice of the Recorder’s intention to register the dealing upon the expiration of 28 days after the service of the notice.

The notice allows the caveator 28 days in which to take action in the Supreme Court to validate the claim. If the caveator does not take action within that 28 days, the caveat will lapse and the dealing will be registered. If the caveator does

take action in the Supreme Court and is unsuccessful the caveat will also lapse and the dealing will be registered.

Section 136A has been introduced to provide for the lapsing of a caveat without the need for a dealing to be lodged. That is the registered proprietor of land over which the caveat is registered can, without the need for a dealing, lodge an application to cancel the caveat. Notice will be provided to the caveator and if the caveator does not take action within that 28 days the caveat will be cancelled. If the caveator does take action in the Supreme Court and is unsuccessful the caveat will also be cancelled.

This provision is sensible and does not limit the lapsing of a caveat to when the registered proprietor deals with that land. This amendment successfully balances the interests of both the registered proprietor and the person on whose behalf the caveat has been lodged. A registered proprietor has the opportunity to have a clear title even when they do not necessarily want to deal with the land, whilst the person on whose behalf the caveat is lodged retains the right to substantiate their caveat, and when able to do so the caveat remains.

The term cancelled has been used in the new section 136A to differentiate this section from a caveat lapsing where a dealing has been lodged which is prohibited from registration by a caveat.

The process for applying, for notice to be provided, and associated matters are consistent with those in section 136.

Clause 34 Section 137 amended (No registration affecting land in respect of which caveat lodged)

Section 137 details what dealings can and cannot be registered regarding land over which a caveat is registered.

Subsection (3) lists the categories of dealings which the Recorder may register unless a caveat is specifically directed against them.

Paragraph (e) of that list deals with two distinct situations. Firstly, where the caveat lapses under section 136 so as to allow registration of a lease, mortgage or encumbrance a subsequent dealing by the proprietor of the lease, mortgage or encumbrance can also be registered. For example, a dealing that is an extension or variation of that lease, mortgage or encumbrance may be registered.

Secondly, where the dealing is a dealing other than an extension or variation of a lease, mortgage or encumbrance and a caveator consented to the registration of the lease, mortgage or encumbrance.

Paragraph (e) has been found to be confusing.

This clause re-words paragraph (e) to address that confusion by clearly separating out the two situations with the new paragraph (e) dealing with the first situation and the new paragraph (ea) dealing with the second situation.

A new paragraph (ba) in subsection (3) has been inserted by this clause. Paragraph (ba) provides that a declaration of severance of joint tenancy pursuant

to section 63 is not prevented from being registered except to the extent that a caveat otherwise specifies. This is because the interests of the joint tenants are not jeopardized by the severancy into tenants in common.

Paragraph (o) has been amended to replace references to previously repealed sections 119, 121 and 123 with references to sections 138X, 138B and 138D respectively.

Clause 35 Section 138D amended (Recorder may make vesting order in certain circumstances when purchaser in possession)

Section 138D provides for, in certain circumstances, the making of a vesting order for land upon proof of sale of that land where no transfer has been obtained or cannot be obtained.

Questions have been raised as to whether or not this section can apply to part of land in a folio of the Register.

The section was not intended to be used for part of land because to vest part of land in a folio of the Register would effectively create a subdivision which would be contrary to the *Local Government (Building and Miscellaneous Provisions) Act 1993*.

Accordingly, this clause inserts a new subsection (1A) which provides that section 138D applies to the whole of the land in a folio of the Register only.

This clause also amends subsection (5)(a) which deals with the provision of notice of an application. Subsection (5)(a) currently provides for notice to be advertised in a newspaper published in the State and circulating in the locality in which the relevant land is situated. The current subsection (5)(a) has been replaced with a new subsection (5)(a) which requires the advertisement of a notice of application in at least one newspaper published and circulating generally in Tasmania and that is available in the locality in which the land is situated.

Currently notice of the application can be advertised in a local newspaper only, for example the Huon News, which may not provide notice to all interested parties. The requirement for advertising in at least one newspaper published and circulating generally in Tasmania addresses this concern. The three major newspapers being the Mercury, Examiner and Advocate fit this requirement.

Clause 36 Section 138E amended (Caveat forbidding granting of application under section 138D)

Section 138E provides the mechanism for lodging a caveat to prevent the granting of an application for a vesting order under section 138D.

Subsections (3) and (4) provide that the Recorder, on receipt of a caveat, under this section, must not proceed with the application until the caveat has been withdrawn or lapsed. The Recorder must consider the caveat and determine how to deal with the application in light of the caveat.

During the review of the Principal Act it was determined that subsections (3) and (4) required amendment to improve their practical application. This clause inserts

new subsections (3), (4) and (4A) which set out the process the Recorder must follow when a caveat is lodged under section 138E.

The new subsections provide the Recorder with the ability to undertake an investigation of the caveat to determine if the application should be granted or refused. They establish a transparent process which both the parties of the application and caveat, and the Recorder can easily follow.

The new subsection (4) also allows the Recorder to conduct an inquiry under section 162. For example, an inquiry could be conducted where the Recorder believes it is the best method of collecting the information required to determine the veracity of the caveat and the application.

Subsection (5) currently provides for the removal of the proceedings before the Recorder into the Supreme Court. Application for removal can be made either by the Recorder or any person who the Supreme Court is satisfied has a proper interest in the matter.

This clause amends subsection (5) by removing specific reference to the Recorder. The parties to the proceedings are in a much better position to decide whether an application to move proceeding should be made. If the proceedings are moved the role of the Recorder is to abide by the decision of the court.

Clause 37 Section 138F amended (Restriction on renewal of caveats)

Section 138F provides a prohibition on the renewal of a caveat that has lapsed or been removed under section 138E by or on behalf of the same person in respect of the same interest unless an order to that effect is made by the Supreme Court.

For consistency with section 14(4) this clause replaces the old subsection (1) with a new subsection (1) and prohibits both the lodging of a new caveat by or on behalf of the same person in respect of the same estate or interest as well as the renewal of a lapsed caveat.

Clause 38 Section 138H substituted

138H. Application to unregistered land

Section 138H states that Part IXB of the Act extends to land which is not registered land, that is general law land.

The intention of the section is that the application of Part IXB extend to land which is not registered land where the situation covered in Part IXB is not otherwise dealt with in the Act. For example section 13 of the Act provides how notice is to be given in respect to general law land, therefore the notice provisions in Part IXB do not apply.

This clause has been amended to clearly give effect to this intention.

Clause 39 Section 138J substituted

138J. Acquisition of easements by possession

Section 138J provides that if a person has used or enjoyed rights that amount to an easement at common law over a specified period of time then upon application the Recorder can vest an easement in that person.

The question has arisen as to whether a person has to be using the easement at the time they make an application under this section.

The Principal Act provides that a proposed applicant must give to the registered proprietor of the land notice of his intention to lodge an application. In some cases upon receipt of this notice the registered proprietor invariably attempts to preclude the applicant from using the easement, for example by erecting a gate if the easement is a right of way.

Therefore, an applicant may not be using the easement at the time of applying because they are physically unable to do so.

A related issue arises as to how 'fresh' does the use or enjoyment of rights have to be, for example a person is able to prove 15 years of use and enjoyment but that was 5 years ago and the person is only now applying and in fact hasn't used the land in the last 5 years.

This is equally the position with an application for a vesting order where the applicant may not be in possession at the time of application because of something the registered proprietor has done.

This clause amends section 138J to deal with these issues.

Subsection (1) has been broken into two sections. The new subsection (1) makes it clear the reference to being under disability relates to the owner of the land and not the applicant (disability is defined in section 138(2)).

A new subsection (2) has been inserted separating from subsection (1) the need for an application to be in an approved form.

A new subsection (3) has been inserted which provides for whom the Recorder may make an order referred to in subsection (1).

The Recorder may make an order in favour of an applicant who after giving notice continues unhindered to exercise rights which the Recorder considers may amount to an easement.

The Recorder may also make an order in favour of an applicant who after giving notice has by the actions of the owner of the land been prevented or hindered from exercising rights which the Recorder considers may amount to an easement. The actions may be direct, for example the erection of a fence or a gate which prevents the applicant from exercising those rights, or they may be indirect for example where the owner of the land accidentally damages a dam wall and the resulting damage prevents the applicant from exercising those rights.

Finally, the Recorder may make an order in favour of an applicant who has exercised rights which the Recorder considers may amount to an easement but before providing notice has been prevented or hindered in the further exercise of those rights by the direct or indirect actions of the owner of the land. This may

occur where the owner of the land becomes aware of the applicants intention to apply but before the applicant provides notice.

The applicant must, however, provide notice within six (6) months after first becoming hindered or prevented from exercising those rights. Six months is deemed sufficient time within which to provide notice indicating to the Recorder that the 'need' for the easement is serious enough to warrant making an application.

Clause 40 Section 138K amended (Applicant to notify owner of servient tenement)

Section 138K requires an applicant to provide written notice of the claim for an easement by possession before lodging an application for an easement under Part IXB.

For consistency with other notice provisions in the Principal Act subsection (1) was amended by adding the words 'in a form approved by the Recorder' after the word 'notice'.

Clause 41 Section 138L amended (Requirements for application)

Section 138L lists, in addition to the requirements of section 138K(1), what an applicant for an easement under Part IXB must show.

Subsection (1) currently requires that the applicant must produce evidence from at least one other person in support of the easement claimed. Often the evidence produced is from a family member.

This clause amends subsection (1) by requiring that the evidence supporting the easement claimed be provided by at least one disinterested person rather than one other person. A disinterested person is a person who will not benefit in any way if the application is successful.

One of the requirements that must be shown is that the easement has not been enjoyed by force or secretly. The amendment supports this requirement and assists the Recorder when considering this aspect.

Subsections (2) and (7) have been amended by replacing the reference to 'field notes' with a reference to 'survey notes'. These amendments insert the correct term being survey notes.

Clause 42 Section 138V amended (Requirements for title by possession)

Section 138V lists what the Recorder must in particular consider when determining an application for title based on possession.

The section currently requires that the applicant must produce evidence from at least one other person in support of the application. Often the evidence produced is from a family member.

This section is amended by requiring that the evidence supporting the application be provided by at least one disinterested person rather than one other person. A

disinterested person is a person who will not benefit in any way if the application is successful. One aspect of possession the Recorder is required to consider is whether the enjoyment of the land was by force or secretly. The proposed amendment assists the Recorder in considering this aspect.

Clause 43 Section 138W amended (Registered proprietor to hold land on trust)

Section 138W provides that where an application has been made for a title by possession the registered proprietor holds the land on trust for the applicant.

Subsection (8) lists the notices required to be given prior to the applicant making an application.

Subsection (8)(a) currently provides that notice is to be advertised in a newspaper published in the State and circulating in the locality in which the relevant land is situated. Subsection (8)(a) has been replaced with a new subsection (8)(a) which requires the advertisement of a notice of application in at least one newspaper published and circulating generally in Tasmania and that is available in the locality in which the land is situated.

Currently notice of the application is advertised in a local newspaper only, for example the Huon News, which may not provide notice to all interested parties. The requirement for advertising in at least one newspaper published and circulating generally in Tasmania addresses this concern. The three major newspapers being the Mercury, Examiner and Advocate fit this requirement

The new subsection (8)(a) requires the notice to be in a form approved by the Recorder. For consistency with the new subsection (8)(a), subsections (8)(b), (8)(c) and (10) have been amended to provide that notice of the application has to be in a form approved by the Recorder.

Clause 44 Section 138X amended (Power of Recorder to make vesting order)

Section 138X provides the Recorder with the power to make an order vesting in an applicant under Division 5 of the Act the legal estate which the applicant would have acquired if the land had not been registered land.

Subsection (2) provides that the Recorder may treat evidence of failure to use an easement or profit a *quod prendre* for a period of not less than 20 years as evidence that the easement or profit a *quod prendre* has been abandoned.

This clause amends subsection (2) by providing that evidence of failure to use an easement, for example, for at least 20 years is to be treated as conclusive evidence that the easement has been abandoned.

The amended subsection (2) is consistent with subsection (2) in section 108 which deals with the same issue of abandonment and introduces a clear and simple process for determining if an easement or profit a *quod prendre* has been abandoned.

An objector to the application will be required to prove actual use of the easement or profit a *quod prendre* for an objection to be successful.

Clause 45 Section 142 substituted

142. Rectification of boundaries, area or position of land

Section 142 provides for the rectification of boundaries, area or position of land. The necessity to correct a title or titles in its description of boundaries may arise from:

- a) inaccurate surveys made in the earlier days of settlement of the State;
- b) incorrect surveys made in more recent times which are disclosed by subsequent surveys; and
- c) failure of owners to erect their fences in the proper position. They are then often prepared to treat the fence as being the correct boundary, rather than go to the cost of shifting the fence.

This clause substitutes a new subsection 142 which is very similar to the old section 142. The major differences relate to the inquiry process.

The current process provides that where a person has an adverse, opposing, claim to the same land subject to the boundary adjustment the Recorder is required to hold an inquiry. A provisional order must then be made. If an objection is raised to the provisional order the Recorder is required to hold a hearing into the objection and a final order is then made. The final order is appealable to the Supreme Court.

A review of the current procedure determined that there was opportunity to provide a more efficient and effective process whilst providing all parties involved with a chance to be heard prior to the Recorder of Titles making a final order, which is appealable to the Supreme Court.

The inquiry process has been replaced by an investigation. Where an objection to an application has been lodged the Recorder may hold an investigation using relevant investigative powers similar to those set out in the *Strata Titles Act 1998* for investigating Applications for Relief under that Act.

Adverse claims and provisional orders will be replaced with objections to the application. Where an objection is lodged against the application the Recorder will be required to investigate the objection prior to determining whether a hearing is required and subsequently making an order. The current provisional order and final order will be replaced by a single final order still appealable to the Supreme Court.

Section 142 has also been amended to clarify that it applies to plans sealed under the *Local Government (Building and Miscellaneous Provisions) Act 1993*. This reflects current practice in that section 142(1)(b) has been used in cases where an error in plan documentation or in boundary re-establishment of a plan sealed under the *Local Government Act (Building and Miscellaneous Provisions) Act 1993* necessitates rectification but that rectification does not materially change the scheme of the subdivision. These are not cases where the applicant seeks to change the boundaries of the lot *per se* but to have the plan documentation match

the lot as it was marked on the ground or to reinstate the correct boundaries of the title subdivided.

The new clause makes ample provision for the Recorder to rectify errors. The Recorder may act on his or her own motion if it appears to the Recorder that there is no interested person to make the application in the new subsection (4).

The circumstances where section 142 applies to sealed plans would be limited to those amendments that are minor in nature and do not materially change the scheme of the subdivision. Notice will be given to the relevant council and affected parties.

Subsection (9) has been amended to simplify the circumstances when the Recorder would refuse to deal with a section 142 application and provide other methods to achieve the desired outcome.

Clause 46 Section 143C amended (Recorder may correct errors on plans)

Section 143C allows the Recorder of the Recorder's own motion to correct patent errors on a plan or accompanying documents deposited or lodged with the Recorder.

Subsection (1)(a) refers to the correction of a 'patent error'. The meaning of the word 'patent' has proven difficult to apply practically.

This clause addresses this difficulty by removing 'patent' thus providing that the Recorder may correct an 'error'. This subsection will only be used when an error is obvious and where no party will be adversely affected by the correction. For example the spelling of a road name is amended from Hysopp to Hyssop.

Pursuant to subsection (3)(b) a person can object to an amendment by the Recorder. However, any objection need not outline the reasons for the objection, which can lead to frivolous or vexatious objections being lodged thus delaying business.

Subsection (3) has been reworded for clarity and a new subsection (3A) introduced which provides that an objection must be in writing and state the grounds on which it is based.

Subsection (4) has been amended by adding paragraph (ba) which provides that the Recorder can correct the error in accordance with the action proposed in the notice under subsection (2). This appears to have been inadvertently forgotten when the section was inserted in 1990.

Clause 47 Section 144 amended (Proprietor if dissatisfied may summon Recorder to show cause)

Section 144 enables a person dissatisfied with a refusal, direction or order of the Recorder to require the Recorder to show cause for that decision.

Subsection (1) provides that a person may require the Recorder to state in writing the grounds for the refusal, direction, or order but does not provide a timeframe within which the requirement is to be made.

A new subsection (1A) has been inserted to provide a person with three (3) months after the relevant refusal, direction or order has been made to lodge a requirement with the Recorder. It also provides that the Recorder in certain circumstances can provide a person with such longer period as the Recorder allows.

Three months provides sufficient time for a person to digest the decision, seek legal advice, and undertake additional research. It also means that any relevant evidence on file remains “fresh” to all parties including the Recorder.

However, the Recorder may provide a person with a longer period if they have been ill, out of the State or for some reason were not made aware of the decision that affected them.

Clause 48 Section 146 amended (Mortgagee, encumbrancee or lessor may obtain possession in certain cases)

Section 146 sets out the circumstances under and procedure by which a mortgagee, encumbrancee or landlord may obtain possession.

Section 146 refers to ‘landlord’ and ‘lessee’. Section 3 provides a definition of ‘lessee’ and ‘lessor’ but not ‘landlord’.

To avoid confusion section 146 has been amended by replacing ‘landlord’ with ‘lessor’ wherever it appears.

Clause 49 Section 150 amended (The assurance fund)

Section 150 sets up a fund from which persons who suffer a loss, damage or deprivation through an action by the Recorder may be compensated.

There is no provision for contributions to the assurance fund under the Act, except in the circumstances set out in subsection (3). Under subsection (3) if the balance of the fund falls beneath \$250,000 the Governor may authorise an increase in fees to contribute to the fund.

Obviously, with the past property boom the sum mentioned in subsection (3), \$250,000, is inadequate and in light of increased property values this clause has increased that figure to \$2,000,000 to ensure there is sufficient funds available for successful claims against the fund.

Subsection (3) refers to increasing the fees prescribed under section 169. Section 169 has previously been repealed. The fees are no longer prescribed by Regulation but form a part of the Act as Schedule 1.

This clause amends subsection (2) to reflect this by replacing ‘prescribed under section 169’ with ‘in Schedule 3’.

Clause 50 Section 153 amended (When action may lie against Recorder as nominal defendant)

Section 153 sets out when a person sustaining loss or damages in particular circumstances may take action against the Recorder as nominal defendant for recovery of damages.

Subsection (1)(b) contains references to previously repealed sections. This clause amends subsection (1)(b) by replacing references to sections 119 and 123 with references to sections 138X and 138D respectively.

Clause 51 Section 154 amended (Date of deprivation in certain cases)

Section 154 establishes the date of deprivation of land for the purpose of calculating damages to which the person deprived of land is entitled.

Section 154 contains references to previously repealed sections. This clause amends section 153 by replacing references to sections 119 and 123 with references to sections 138X and 138D respectively.

Clause 52 Section 155 amended (Person sustaining loss may apply for compensation)

Section 155 outlines the procedure a person must take to make a claim against the fund where a person suffers loss or damage and the Recorder of Titles is the nominal defendant.

Subsection (2) does not currently differentiate between the value of claims with all claims subject to the same process. The current process involves the Recorder, the Minister and the Governor, with the Governor issuing a Warrant to the Treasurer for payment of the amount so certified by the Recorder.

In reality the claims made in the last number of years have been, apart from one, usually in the hundreds of dollars or early thousands of dollars and the work involved in the current process is lengthy and tortuous, thus depriving applicants of the receipt of their compensation in a timely manner.

To distinguish between the value of claims and ensure that the process applied is appropriate, subsection (2) has been amended to establish two processes. The first deals with a claim under \$10,000 and the second with where a claim is over \$10,000.

Where a claim is under \$10,000 then the procedure will be that if the Recorder admits the claim and certifies accordingly to the Minister then the Minister at his or her discretion may issue a Warrant to the Treasurer for payment of the amount.

Where a claim is over \$10,000 then the seriousness of the amount justifies retention of the current procedure.

A new subsection (3) has been included to provide that the Treasurer pays the amount certified by either the Minister or the Governor as the case may be.

Clause 53 Section 158 amended (Limitation of actions)

Section 158 applies the *Limitation Act 1974* to actions under section 152 or 153.

Subsection (2) contains references to previously repealed sections. This clause amends subsection (2) by replacing references to sections 119 and 123 with references to sections 138X and 138D respectively.

Clause 54 Section 162 amended (Recorder may require map to be deposited)

Section 162 provides the Recorder with the power to require a map or plan to be deposited.

This clause amends subsection (1) to specifically provide the Recorder with the power to require a map or plan to be deposited where a person applies under section 108 for the released or partial release of an easement or profit a prendre .

It has been argued that this section is not wide enough to require a plan to be lodged in the above circumstances and hence has been amended accordingly.

Clause 55 Section 168 amended (Service, &c., of notices)

Section 168 sets out the process for the service of notices.

Section 168(5) allows for the Recorder to dispense with the production of certain documents and also dispense with advertising. Section 168 does not however provide the Recorder with the power to require notices, advertisements in the paper and notices posted on land.

While some sections have this requirement, title by possession for example, there are times that the Recorder needs a notice to be given to an “interested” party on the grounds of procedural fairness and the applicants have argued that the Recorder has no power to do so.

Subsection (6) has been inserted to provide the Recorder with a general power to require notices, advertisements in the paper and notices posted on land but only where the Recorder considers it desirable in the interests of procedural fairness and the administration of the Principal Act.

For example, if a person makes an application under section 140 to have a superfluous dealing cancelled such as an old caveat it may be desirable to give notice to the caveator if that person still exists.

Clause 56 Section 170 amended (Regulations)

Section 170 is the regulation making section. In subsection (1)(c) forms for use in the Land Titles Office were prescribed by regulation.

In 1996 section 169A was inserted into the Principal Act providing for “approved forms” by the Recorder.

This clause amends subsection (2)(c) by removing reference to any form prescribed by the regulations and replacing it with any approved form or other

form approved by the Recorder. The inclusion of ‘other form approved by the Recorder’ covers this term which is used throughout the Principal Act.

Clause 57 Repeal of Act

This clause provides that this Act is repealed on the ninetieth day from the day on which it commences.