

Transfer of Land (Single Register) Bill

EXPLANATORY MEMORANDUM

PART 1—PRELIMINARY

Clause 1 states the purpose of the Act.

Clause 2 is the commencement provision.

PART 2—AMENDMENTS TO TRANSFER OF LAND ACT 1958

Clause 3 states that in this Part of the Act, the **Transfer of Land Act 1958** is the Principal Act.

Clause 4 amends Section 3(2) of the Principal Act to limit the operation of Part I of the **Property Law Act 1958**.

Clause 5 subclause (1) inserts six new definitions into the definition provision (Section 4) of the Principal Act. The definitions are of:

- conversion scheme
- entitled person
- identified folio
- provisional folio
- specified dealing
- subsisting interest

subclause (2) amends Section 4 of the Principal Act. The amendments are:

- a new definition of "legal practitioner's certificate"
- repeal of the definition of "limited folio"
- a new definition of "ordinary folio"
- repeal of the definition of "qualified folio"

additional words in the definition of "registered proprietor"

- a new definition of "search of title"

Clause 6 is the substantive provision, which substitutes a new Part II into the Principal Act.

Division 1—General

Section 8 states that all land alienated by the Crown is under the operation of the Principal Act and that a Crown grant other than to a prescribed authority must be in duplicate.

Section 9 imposes a duty on the Registrar of Titles to bring all alienated land under the operation of the Principal Act and specifies how land may be brought under the operation of the Principal Act.

Section 10 identifies the categories of persons entitled to have land brought under the operation of the Principal Act.

Section 11 provides that certain leasehold land may be brought under the operation of the Principal Act.

Division 2—On Legal Practitioner's Certificate

Section 12 provides for the use of alternative conversion schemes in Sections 13, 14 and 15 to bring land under the operation of the Principal Act.

Section 13 provides for a conversion scheme based on deeds registration supported by legal practitioner's certificate.

Section 14 provides for a conversion scheme based on application supported by legal practitioner's certificate.

Section 15 has similar operation to Section 14 except that an application can include land claimed by adverse possession and must additionally be supported by plan of survey or other adequate evidence to identify the land.

Section 16 specifies the requirements of a legal practitioner's certificate.

Section 17 provides that land in a provisional folio is subject to any warning on the folio and any qualifications in any warning.

Section 18 enables the Registrar to create an ordinary folio or a provisional folio bearing a Fifth Schedule Part III warning (warning as to title) or a Fifth Schedule Part IV warning (warning as to title dimensions), or both warnings, and empowers the Registrar to require the payment of an assurance contribution.

Section 19 sets out in whose name a folio created under this Division is to be registered.

Section 20 requires the Registrar to delete a Fifth Schedule Part V warning (warning as to subsisting interests) upon the creation of an ordinary folio or a provisional folio under Division 2.

Section 21 Sub-section (1) provides that a legal practitioner's qualification recorded in a warning on a provisional folio ceases to affect the land after 15 years.

Sub-section (2) provides for the removal, without application, of a warning which has ceased to affect the land when a dealing with a provisional folio is registered.

Division 3—Without Legal Practitioner's Certificate

Section 22 provides for an entitled person to lodge a specified dealing and stipulates the supporting documentation which must be lodged.

Section 23 provides for the creation of a provisional folio based on application and stipulates the supporting documentation which must accompany any application.

Section 24 empowers the Registrar to create a provisional folio upon compliance with either Section 22 or 23.

Section 25 requires the Registrar to record on a provisional folio created under Division 3 a Fifth Schedule Part V warning (warning as to subsisting interests) and the folio is subject to the subsisting interests.

Section 26 empowers the Registrar to record on a provisional folio created under Division 3 a Fifth Schedule Part IV warning (warning as to title dimensions) and the folio is subject to the warning.

Section 26A sets out in whose name a provisional folio created under Division 3 is to be registered.

Section 26B Sub-section (1) empowers the Registrar to refuse registration of a specified dealing lodged other than by the registered proprietor of a provisional folio.

Sub-section (2) requires the Registrar to give to the person lodging a specified dealing notice of the existence of a provisional folio.

Sub-section (3) entitles the person who receives notice to seek a declaration from the Court that the land is subject to the specified dealing.

Sub-section (4) requires the Registrar to give effect to any Court declaration.

Section 26C provides that land in a Division 3 provisional folio ceases to be subject to subsisting interests after 15 years and provides for the removal, without application, of a Fifth Schedule Part V warning which has ceased to affect the land when a dealing with a provisional folio is registered.

Section 26D provides that where a Division 3 provisional folio relates to a possessory interest, the Registrar must, at the end of 15 years and upon application, give notice to interested parties of the intention to delete the warning from the folio and may, upon compliance with the notice requirements, delete the warning.

Section 26E empowers the Registrar to create identified folios.

Section 26F entitles any person claiming an interest in land in an identified folio to lodge a document notifying the interest and empowers the Registrar to record on the folio the interest claimed.

Section 26G limits the effect of a recording on an identified folio.

Section 26H provides that an interest in land recorded on an identified folio is subject to all subsisting interests.

Section 26I specifies the basis for determining priority of interests recorded on an identified folio.

Division 4—General Provisions

Section 26J provides for a standard form of search of title of General Law land for the purposes of Part II.

Section 26K provides that Section 106(c) of the Principal Act does not apply to warnings recorded on a provisional folio and that Section 42 of the Principal Act does not apply to land incorrectly described or included in a provisional folio which bears a Fifth Schedule Part IV warning.

Section 26L provides that land in certain provisional folios cannot be subdivided or consolidated.

Section 26M provides for General Law mortgages to be deemed to be mortgages under the Principal Act and provides for the variation of the priority of certain mortgages.

Section 26N provides the mechanism for notice to be given by the Registrar to a person claiming an interest recorded on an identified folio and for the removal of the recording after a specified period unless the person claiming the interest notifies the Registrar that proceedings have been taken in a Court to substantiate the interest claimed.

Section 26O provides that where the Registrar intends to create a folio under Division 2 in respect of land for which a provisional folio under Division 3 already exists, notice must be given to the proprietor of the provisional folio unless the proprietor of each folio is the same person.

Section 26P Sub-section (1) provides for an application to remove a Fifth Schedule Part IV warning (warning as to title dimensions) from a provisional folio.

Sub-section (2) requires an application to be supported by a certified plan of survey.

Sub-section (3) empowers the Registrar to remove a warning as to title dimensions from a provisional folio.

Sub-sections (4), (5) and (6) enable a person to make a single application to settle boundaries of a provisional folio and indicate how any application is to be processed by the Registrar.

Sub-section (7) provides that this section does not limit section 106(e) of the Principal Act.

Sub-section (8) applies Section 102 of the Principal Act to applications under Section 26P.

Section 26Q specifies the mechanisms for the giving of the notice required by Sections 15, 26D and 26P.

Section 26R provides that a person who receives notice may lodge a caveat to prevent the creation of a provisional folio or the removal of a warning (as the case may be) and further provides for the lapsing of a caveat unless the caveator commences court proceedings to substantiate the claim.

Sub-section (8) provides for an applicant to pay compensation to a caveator where the caveator is put to unnecessary expense.

Section 26S Sub-section (1) gives the Registrar broad discretions to refuse to complete any conversion scheme, to refuse to create a folio or to create a folio of the type which the Registrar considers appropriate.

Sub-sections (2) and (3) require the Registrar to give notice of and reasons for any refusal to complete a conversion scheme or to create any folio.

Sub-section (4) provides that section 116 of the Principal Act does not apply to the Registrar's refusal to complete a conversion scheme.

Sub-sections (5) and (6) enable the Registrar to rely on the legal practitioner's certificate entirely and ensure that no examination of title by the Registrar is necessary.

Sub-section (7) provides that the refusal of the Registrar to complete a conversion scheme does not prevent the Registrar from creating a folio under Division 3.

Section 26T requires the Registrar to retain documents lodged, but provides for the Registrar to return documents in certain circumstances.

Section 26U requires the Registrar to give notice of the creation of a folio to every person having a recorded interest and such other notice as the Registrar thinks fit.

Section 26V Sub-section (1) enables the Registrar to make a recording of an instrument under the Principal Act that might have been registered under Section 6 of the **Property Law Act 1958** had that section not been amended, providing the instrument is dated before or not more than 6 months after the first folio is created.

Sub-sections (2) and (3) provide for an instrument of transfer or mortgage of land which is drawn in the form required by the Principal Act and in anticipation of conversion to operate as a General Law conveyance or mortgage if no folio is created.

Section 26W makes a reference in any other Act which requires the Registrar to make any recordings in the register to, in the case of General Law land, be read as requiring the Registrar to bring the land under the operation of the Principal Act.

Clause 7 Sub-clause (1) substitutes a new Section 27(7)(b) into the Principal Act, which excepts an identified folio from containing a description of the proprietor.

Sub-clause (2) inserts section 27(7A), which provides that the Registrar not include a description of the proprietor in an identified folio.

Clause 8 inserts section 27(13), which prohibits the Registrar from producing a Certificate of Title for an identified folio.

Clause 9 adds reference to Division 3 of Part II into Section 52(1) of the Principal Act.

Clause 10 amends section 60(1) of the Principal Act to make the references to survey requirements consistent with section 15.

Clause 11 amends sections 61(2), 73(4) and 100 of the Principal Act by deleting a redundant expression and substituting new terminology.

Clause 12 inserts section 72(2B) into the Principal Act, which authorises the Registrar to accept a legal practitioner's certificate as evidence of the creation of an easement.

Clause 13 repeals section 80.

Clause 14 amends section 89A(7)(b) of the Principal Act to make it consistent with Section 26N(9).

- Clause 15 repeals section 108(4).
- Clause 16 amends section 110(1)(a) by extending the indemnity cover to provisional folios.
- Clause 17 inserts section 113(6A) into the Principal Act, which provides for the amendment of the address for service of notices in respect of an interest recorded on an identified folio.
- Clause 18 inserts a new Part VII into the Principal Act.

PART VII—TRANSITIONAL

Section 123 provides that any General Law mortgage recorded on a folio of the Register at the commencement date of the Act is deemed to be a mortgage registered under the Principal Act.

Section 124 provides that all existing limited or qualified folios of the register are deemed to be provisional folios created at the commencement date of the Act.

Section 125 provides that a search of title completed under the repealed Section 26F of the Principal Act is deemed to be a search of title under that Act.

Section 126 provides that a provision in any Act which requires a recording to be made by the Registrar-General is to be read as a direction to the Registrar of Titles to bring land under the operation of the Principal Act and to make appropriate recordings.

- Clause 19 amend the heading to Parts III and IV of the Fifth Schedule and adds Part V, being a warning as to subsisting interests.
- Clause 20 amends the Schedule to Part 2 of Schedule 5A of the Principal Act to enable a legal practitioner to include in any certificate a reference to a defect in title where the certificate relates to possession exceeding 15 but less than 30 years.

PART 3—AMENDMENTS TO PROPERTY LAW ACT 1958

- Clause 21 states that in this Part of the Act, the **Property Law Act 1958** is the Principal Act.

Clause 22 Sub-clause (1) repeals Sections 4, 5(1) and (3), 7 to 12 and 13(c) of the Principal Act.

Sub-clause (2) adds subsection (2) to Section 6 of the Principal Act, which prohibits registration of deeds, conveyances or instruments in the office of the Registrar-General after commencement of clause 6 of the Bill.

Clause 23 repeals section 22(1) of the Principal Act.

PART 4—AMENDMENTS TO OTHER ACTS

Clause 24 provides for consequential amendments to other Acts as specified in the Schedule.

