

**REAL PROPERTY (CONVERSION OF TITLE) AMENDMENT
BILL, 1966.**

EXPLANATORY NOTE.

THE objects of this Bill are to facilitate the issue of certificates of title under the Real Property Act, 1900, as amended by subsequent Acts, in respect of land under common law title and to make provisions of an ancillary or consequential character.

REAR OF THE FRONT WHEEL
PLATE

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No. . 1966.

A BILL

To facilitate the bringing of land under the provisions of the Real Property Act, 1900, as amended by subsequent Acts; for this purpose to amend that Act, as so amended; and for purposes connected therewith.

[MR McCaw—8 December, 1966.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Real Property (Conversion of Title) Amendment Act, 1966".
- (2) Short title, citation and commencement.

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(2) The Real Property Act, 1900, as amended by subsequent Acts and by this Act, may be cited as the Real Property Act, 1900-1966.

(3) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. The Real Property Act, 1900, as amended by subsequent Acts, is amended— Amendment of Act No. 25, 1900.

10 (a) by inserting in section one next after the matter relating to Part IV the following new matter :— Sec. 1. (Short title.)

PART IVA.—QUALIFIED CERTIFICATES OF TITLE—*ss. 28A-28P.*

15 (b) by inserting in paragraph (a) of section three in the definition of "Instrument" after the words "certificate of title" the words "(including a qualified certificate of title, as defined in section 28A of this Act)"; Sec. 3. (Interpretation.)

20 (c) by inserting in paragraph (h) of section twelve after the word "Act" where secondly occurring the words "or advertisements referred to in paragraph (c) of subsection one of section 28G of this Act"; Sec. 12. (Powers of Registrar-General.)

(d) by inserting next after section twenty-eight the following new Part :— New Part IVA.

PART IVA.

25 QUALIFIED CERTIFICATES OF TITLE.

28A. In this Part and in all instruments pur- Interpre-
porting to be made or executed under this Act, tation.
unless inconsistent with the context or subject
matter—

30 "Caution" means a caution referred to in section 28J of this Act.

"Land under common law title" means land alienated from the Crown in fee and not subject to the provisions of this Act.

"Ordinary

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- “Ordinary certificate of title” means a certificate of title that is not a qualified certificate of title.
- 5 “Qualified certificate of title” means a certificate of title upon which is entered a caution that has not been cancelled.
- 10 “Registered deed” means a conveyance or mortgage registered under the provisions of the Registration of Deeds Act, 1897, as amended by subsequent Acts.
- “Subsisting interest”, in relation to land comprised in a qualified certificate of title, means—
- 15 (a) any contingent or vested estate or interest in that land that was in existence at the date of the issue of the qualified certificate of title and would have been enforceable against the person for the time being named
- 20 in that qualified certificate of title as the registered proprietor had that qualified certificate of title not issued and had any dealing registered thereon been effected by a corresponding instrument duly registered under the Registration of Deeds Act, 1897, as amended by
- 25 subsequent Acts, at the same time as the registration of that dealing in the register-book; and
- 30 (b) any estate or interest in that land, arising under any statute of limitations, that was in existence or in the course of being acquired at the date of the issue of the qualified certificate of title.
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5 28B. The Registrar-General may, upon a request made by the persons who have applied under Part IV of this Act to bring any land under the provisions of this Act, and, where any mortgagee of the land has joined in the application, with the consent of that mortgagee, and upon withdrawal of the application, issue, in accordance with the provisions of this Part, a qualified certificate of title for any land the subject of the application.

Qualified certificate of title may be issued on primary application.

10 28C. (1) The Registrar-General may refuse to register, pursuant to section one hundred and ninety-six of the Conveyancing Act, 1919, as amended by subsequent Acts, a plan of subdivision that includes land under common law title unless there is lodged with him—

Qualified certificate of title may be issued on subdivision.

15 (a) any registered deed whereby the land was, or purported to be, conveyed to the subdivider; or

20 (b) where the subdivider acquired title to any such land by devolution of law, any registered deed whereby the land was, or purported to be, conveyed to the person from whom the land so devolved, and such other evidence of the devolution as the Registrar-General may require,

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together with any registered deed whereby a legal estate in the land is, or purports to be, vested in a mortgagee.

30 (2) Upon registration of a plan referred to in subsection one of this section and lodgment of the appropriate documents referred to in that subsection, the Registrar-General may issue, in accordance with the provisions of this Part, a qualified certificate of title for any land under common law title included in the plan.

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28D.

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- 5 28D. Where the Registrar-General is satisfied that any registered deed adequately defines, without further survey definition, any land under common law title the title to which is evidenced by that deed, he may, upon registration of the deed, retain it and issue, in accordance with the provisions of this Part, a qualified certificate of title for any of that land. Qualified certificate of title may be issued upon registration of deed.
- 10 28E. (1) The Registrar-General may cause notice to be given to any person requiring that person, after making such enquiries as are necessary to enable him to do so, within a time specified in the notice— Qualified certificate of title may be issued upon investigation by Registrar-General.
- 15 (a) to furnish to the Registrar-General a statement stating whether or not that person believes himself to be entitled to a legal estate in land under common law title specified in the notice; and
- 20 (b) where a legal estate is so claimed,—
- 25 (i) to annex to that declaration a list, duly verified, setting out in chronological order particulars of all instruments that evidence title to the land and of the existence of which he is aware and to indicate in that list which of those instruments are in his possession or under his control; and
- 30 (ii) to produce to the Registrar-General such of those instruments as are in his possession or under his control.
- 35 (2) After consideration of a statement furnished pursuant to subsection one of this section wherein a legal estate is claimed in land under common law title, the Registrar-General may, in accordance with the provisions of this Part, issue for any such land a qualified certificate of title.

(3)

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5 (3) Any person who wilfully refuses or neglects to comply with any requirement of a notice given to him under subsection one of this section or who makes any statement pursuant to such a notice that, to his knowledge, is false or misleading in a material particular shall be guilty of a misdemeanour and shall be liable therefor to the penalty or punishment provided by subsection one of section one hundred and forty-one of this Act.

10 28F. (1) Where it appears to the Registrar-General that the legal estate in land is vested in a mortgagee, any qualified certificate of title issued for the land shall name the mortgagee as the registered proprietor thereof. Mortgagee entitled to qualified certificate of title.

15 (2) The Registrar-General shall enter on every qualified certificate of title issued under subsection one of this section a caveat prohibiting the registration of any dealing except in accordance with the powers of the registered proprietor as such mortgagee.

20 28G. Immediately after issuing a qualified certificate of title, the Registrar-General shall— Issue of qualified certificates of title to be publicised.

25 (a) chart on any appropriate map or plan or otherwise record the issue of the qualified certificate of title;

(b) forward to the council of the area in which the land comprised in the qualified certificate of title is situated a plan of the land;

30 (c) cause notice of the issue to be advertised in a newspaper printed and published in the district in which the land is situated; and

35 (d) cause such other publicity to be given to the issue of the qualified certificate of title as the Registrar-General thinks fit.

28H.

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5 28H. (1) The Registrar-General shall cause a memorandum of the issue of a qualified certificate of title to be prepared and registered in the General Register of Deeds kept under the Registration of Deeds Act, 1897, as amended by subsequent Acts, and, for the purposes of that Act, as so amended, that memorandum shall be deemed to be a registration copy of an instrument duly registered under that Act, as so amended.

Issue of qualified certificate of title to be registered in General Register of Deeds.

10 (2) The Registrar-General may register on a qualified certificate of title any registered deed affecting land comprised in the qualified certificate of title if the registered deed—

15 (a) was executed before the issue of the qualified certificate of title by the registered proprietor for the time being named therein;

20 (b) is lodged with the Registrar-General in the same manner as a similar dealing with land in an ordinary certificate of title; and

(c) is so lodged within six months next after issue of the qualified certificate of title.

25 28I. (1) When issuing a qualified certificate of title, the Registrar-General shall notify thereon any subsisting interest then apparent to him, but shall not be concerned to make searches or inquiries as to the existence of any such interest.

Subsisting interests to be entered on qualified certificates of title.

30 (2) The Registrar-General may, at any time after the issue of a qualified certificate of title, notify thereon any additional subsisting interest in the land comprised therein.

28J.

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28J. (1) When issuing a certificate of title pursuant to this Part, the Registrar-General shall enter thereon a caution—

- 5 (a) warning persons dealing with the registered proprietor that the land comprised therein is held subject to any subsisting interest, whether notified thereon or not; and
- 10 (b) specifying the amount of any charge created pursuant to subsection two of section 28G of this Act.

15 (2) In any caution so entered, the Registrar-General may indicate that, for the purpose of issuing an ordinary certificate of title in respect of other land, a chain of title evidencing the title to land comprised in that qualified certificate of title has been accepted by the Registrar-General up to a specified deed registered under the Registration of Deeds Act, 1897, as amended by subsequent Acts.

20 (3) Where a caution contains any such indication, the qualified certificate of title shall, notwithstanding any other provision of this Part, not be subject to any subsisting interest arising under an instrument registered under the Registration of Deeds Act, 1897, as amended by subsequent Acts, before the registration of the specified deed referred to in subsection two of this section, other than such subsisting interests as are notified on the qualified certificate of title or are preserved by section forty-two of this Act.

25 28K. The registered proprietor named in a qualified certificate of title may lodge with the Registrar-General the duplicate thereof, together with a memorandum, in a form approved by the Registrar-General, setting out particulars of any subsisting interest affecting the land therein comprised, and not already entered thereon, and the Registrar-General shall notify that subsisting interest on the relevant folium of the register-book.

Additional
subsisting
interests
may be
notified.

28L.

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5 28L. The registered proprietor named in a qualified certificate of title who has knowledge of a subsisting interest that affects land comprised therein and is not notified thereon, nor referred to in the caution entered thereon, and who, without having lodged a memorandum as provided in section 28K of this Act, creates or disposes of or otherwise deals with any estate or interest in land so affected or applies for the cancellation of a caution shall be guilty of a misdemeanour and shall be liable therefor to the penalty or punishment provided by subsection one of section one hundred and forty-one of this Act.

Duties of registered proprietor dealing with land in qualified certificate of title.

15 28M. (1) Except as provided in subsection two of section 28H of this Act, the Registrar-General shall not register any instrument dealing with land comprised in a qualified certificate of title unless the instrument is made subject to subsisting interests.

Deals with land in qualified certificate of title to be subject to subsisting interests.

20 (2) Nothing in subsection one of this section shall—

(a) render a subsisting interest enforceable against a party taking under an instrument; or

25 (b) prevent the lapsing of a caution in accordance with subsection three of this section.

30 (3) In favour of any person who is the registered proprietor of any estate or interest in land comprised in a qualified certificate of title and who, for valuable consideration and without fraud to which he is a party, acquired that estate or interest from a registered proprietor of that land, the caution entered on that qualified certificate of title

shall,

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5 shall, as regards his estate or interest, lapse upon his becoming registered as proprietor of that estate or interest or at the expiration of six years from the date of issue of the qualified certificate of title, whichever is the later, and thereupon that registered proprietor shall hold that estate or interest free from any interests affecting it at the date of issue of the qualified certificate of title, other than those referred to in subsection five of this section.

10 (4) The registered proprietor of land comprised in a qualified certificate of title may apply to the Registrar-General for cancellation of the caution entered on that qualified certificate of title, and the Registrar-General may cancel the
15 caution if he is satisfied that by virtue of subsection three of this section all estates and interests in that land are held free from any subsisting interests, other than those referred to in subsection five of this section.

20 (5) The lapsing or cancellation of a caution does not operate to defeat any subsisting interest that—

(a) was notified on the qualified certificate of title; or

25 (b) was the subject of a caveat affecting land comprised in such a certificate of title,

immediately before the lapsing or cancellation, as the case may be.

30 28N. Before cancelling any caution entered on a qualified certificate of title, the Registrar-General may, in his discretion, call in and cancel, wholly or partially as the case may require, any instruments of title executed before the issue of such qualified certificate of title and affecting the land comprised therein.

Cancellation
of
instruments.

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5 280. Notwithstanding the provisions of Part XIV of this Act, no summons or other proceeding shall lie against the Registrar-General for any refusal to issue a qualified certificate of title or to cancel a caution. Certain proceedings against Registrar-General barred.

10 28P. (1) Except as otherwise provided by subsection two of this section and any other provision of this Part— Application of provisions of this Act to qualified certificate of title and land therein.

(a) upon the issue of a qualified certificate of title the land comprised therein shall become subject to the provisions of this Act;

15 (b) the provisions of this Act relating to ordinary certificates of title, land comprised in ordinary certificates of title and to the registration of dealings affecting land comprised in ordinary certificates of title shall apply to qualified certificates of title, land comprised in qualified certificates of title and the registration of dealings affecting land comprised in qualified certificates of title;

(c) a reference in this and in any other Act to a certificate of title includes a reference to a qualified certificate of title; and

25 (d) a qualified certificate of title shall be evidence as to title in all respects as if it were an ordinary certificate of title, except that it shall be subject to every subsisting interest in the land comprised therein, whether notified thereon or not.

30 (2) For the purposes only of subsection one of this section the provisions of this Act shall be deemed to be modified as follows :—

35 (a) by inserting at the end of section fourteen the following new subsections :— Sec. 14. (Land may be brought under the Act.)

(5) In this section, "Land not subject to the provisions of this Act" includes land in a qualified certificate of title, and an application

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application for an ordinary certificate of title in respect of any such land may be made by the registered proprietor of the land or by any other person referred to in subsection two of this section.

(6) Any such application may be made and dealt with in accordance with the provisions of this Part subject to such modifications as to the Registrar-General may seem appropriate and upon the issue of an ordinary certificate of title for any land any qualified certificate of title for that land shall be cancelled.

(b) by omitting subsection three of section twenty-nine;

Sec. 29.
(Instru-
ments of
title how to
be dealt
with.)

(c) by inserting at the end of section 31A the following new subsection :—

Sec. 31A.
(Registrar-
General to
issue certi-
ficates of
title in
respect of
resumed
land.)

(7) The provisions of this section shall apply, mutatis mutandis, to land in a qualified certificate of title and an application in respect of any such land may be made and dealt with in accordance with the provisions of this section.

(d) by omitting from subsection two of section thirty-three the words "The Registrar-General shall note thereon in such manner as to preserve their priority the particulars of all unsatisfied mortgages or other encumbrances, and of any dower, lease, or rent charge to which the land may be subject, and if such certificate of title be issued" and by inserting in lieu thereof the words "Where the Registrar-General issues a qualified certificate of title";

Sec. 33.
(Certificate
of title to
be in dupli-
cate and
bound up
in register.)

(e)

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- (e) by inserting next after section forty-four the following new section :— New sec. 44A.
- 44A. Nothing in section forty-three, subsections two and three of section 43A or section forty-four shall operate to defeat any claim based on a subsisting interest. Secs. 43, 43A (2), (3), 44 not to apply to defeat subsisting interests.
- (f) by inserting at the end of section forty-five the following new subsection :— Sec. 45. (Statute of limitation not to run against land under the Act.)
- (2) This section does not apply to land comprised in a qualified certificate of title. against land under the Act.)
- (g) by inserting next after subsection one of section seventy-two the following new subsection :— Sec. 72. (Caveat may be lodged.)
- (1A) Where in any caveat lodged in respect of land comprised in a qualified certificate of title, the caveator claims a subsisting interest, that caveat shall be deemed to prohibit the cancellation of the caution entered on that qualified certificate of title and, for the purposes of this Division, any application for cancellation of the caution shall be deemed to be an application for registration of a dealing.
- (h) by inserting next after section seventy-six the following new section :— New sec. 76A.
- 76A. In every instrument registered under this Act creating or transferring any estate or interest in land comprised in a qualified certificate of title, there shall be implied, in addition to the covenants implied by this Part, such covenants as are set forth by section seventy-eight of the Conveyancing Act, 1919, as amended by subsequent Acts, and as would have been implied in respect of any subsisting interest in Additional implied covenants in respect of land in a qualified certificate of title.

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5 in that land if that instrument had been an instrument evidencing an equivalent transaction referred to in that section and invoking such of those covenants as are appropriate to the nature of the transaction.

(i) by inserting next after section one hundred and twenty-five the following new section : —

10 — 125A. Nothing in section one hundred and twenty-four of this Act shall defeat any action referred to in that section for the recovery of land comprised in a qualified certificate of title where that action is based on a subsisting interest. Sec. 124 included in certain cases where land is in a qualified certificate of title.

15 (3) Any expressions defined by section 28A of this Act have the same meanings in the provisions modified by subsection two of this section as they have in the said section 28A.

BY AUTHORITY:

V. C. N. BLIGHT, GOVERNMENT PRINTER, SYDNEY, NEW SOUTH WALES—1966



