

CONCURRENCE COPY

REAL PROPERTY (CONVERSION OF TITLE) AMENDMENT BILL, 1984 (No. 2)

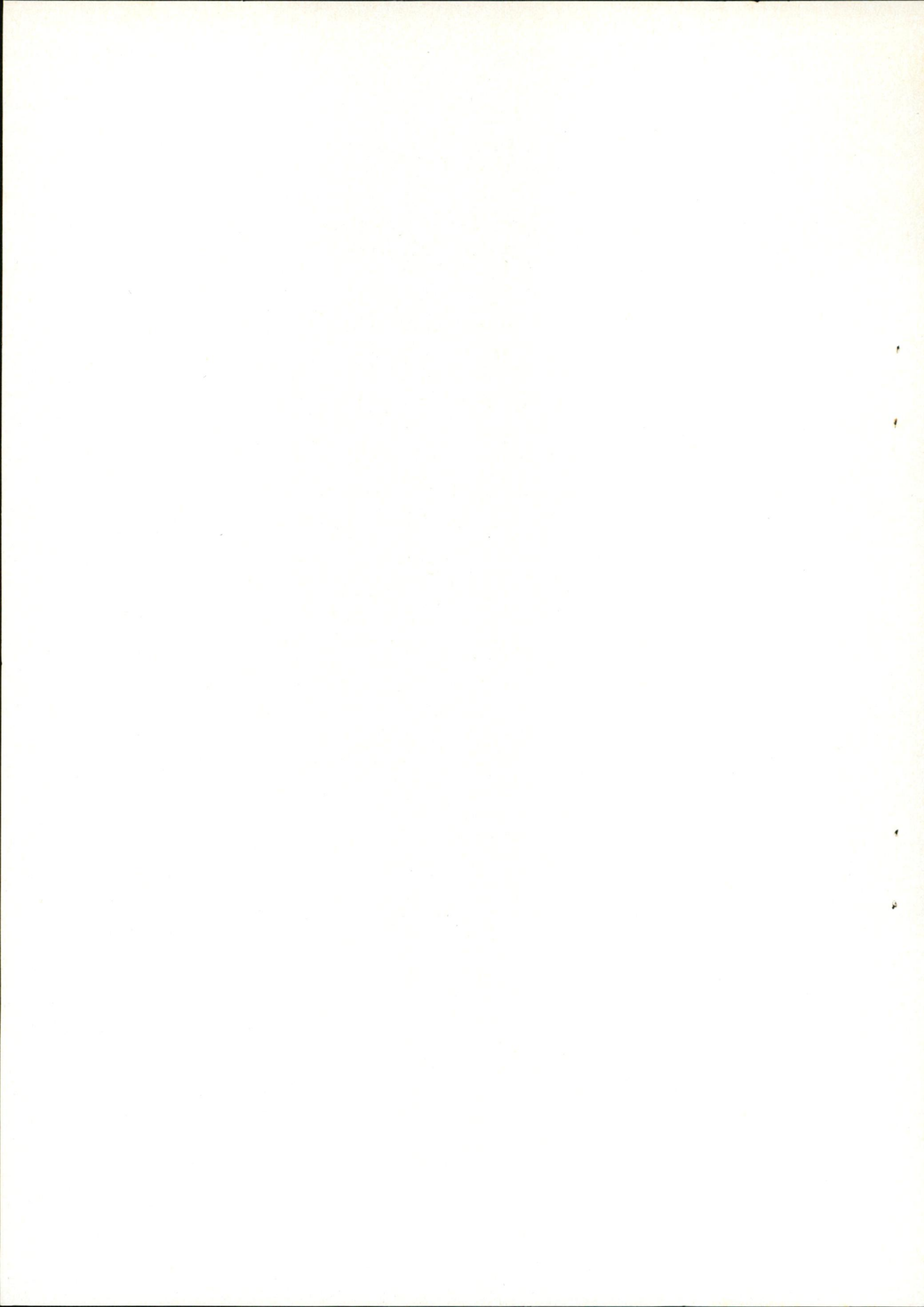
EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Real Property Act, 1900, so as—

- (a) to dispense with certain requirements relating to public notification of the Registrar-General's intention to create qualified folios of the Register, reliance being had instead on the Registrar-General's power to notify interested persons on an individual basis (Schedule 1 (2) and (4));
- (b) to provide for appropriate protection of unregistered interests in land comprised in a qualified folio of the Register in certain cases where the registered proprietor claims title through a person who acquired the land otherwise than by a conveyance of the land for valuable consideration (Schedule 1 (6) and (7));
- (c) to empower the Registrar-General to require the furnishing of information, and the production of documents, that will facilitate the creation of qualified or limited folios of the Register (Schedule 1 (9) and Schedule 2 (9)—proposed sections 28QA and 28ZD);
- (d) to enable the Registrar-General to require, as a condition precedent to the registration of a person as the proprietor of a parcel of land in which the person claims a possessory title, consolidation of that parcel with any adjoining parcel of which the person is already the registered proprietor (Schedule 2 (4));
- (e) to enable land comprised in a limited folio of the Register to be dealt with notwithstanding the inconclusive definition of its boundaries and to provide, in the case of any such dealings, for appropriate protection of unregistered interests (Schedule 2 (7)–(12)); and
- (f) to enable the title to land registered in the name of a mortgagee or chargee to be registered, with the consent of the mortgagee or chargee, in the name of the mortgagor or charger (Schedule 4 (3)).

The Bill contains other minor, consequential or ancillary provisions.



**REAL PROPERTY (CONVERSION OF TITLE)
AMENDMENT BILL, 1984 (No. 2)**

No. , 1984.

A BILL FOR

An Act to amend the Real Property Act, 1900, with respect to qualified folios and limited folios of the Register and for other purposes.

[MRS CROSIO—2 *May*, 1984.]

Real Property (Conversion of Title) Amendment.

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:—

5 **Short title.**

1. This Act may be cited as the "Real Property (Conversion of Title) Amendment Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

15 3. The Real Property Act, 1900, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

20 SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO QUALIFIED TITLE.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LIMITED TITLE.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED TITLE AND TO LIMITED TITLE.

25 SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Real Property (Conversion of Title) Amendment.

Amendment of Act No. 25, 1900.

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

SCHEDULE 1.

(Sec. 5.)

**AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE.**

(1) Section 3 (1), definition of "Qualified folio"—

After the definition of "Proprietor", insert:—

10 "Qualified folio"—A folio of the Register in which is recorded a
caution under section 28J that has not been cancelled.

(2) Section 12 (1) (h)—

Omit "(other than advertisements referred to in section 28G (c))".

(3) Section 28A, definitions of "Ordinary folio of the Register", "Qualified
15 folio of the Register"—

Omit the definitions.

(4) Section 28G—

Omit the section, insert instead:—

Restriction on creation of qualified folio.

20 28G. (1) Where the Registrar-General intends to bring land under
the provisions of this Act by creating a qualified folio of the Register
for that land and, pursuant to section 12 (1) (h) or 12 (1A), gives
notice of that intention the Registrar-General shall, in the notice,

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

5 specify a period (expiring not earlier than one month after the date
of the notice) before the expiration of which that folio will not be
created.

10 (2) The Registrar-General shall not create a qualified folio
of the Register if notice of intention to create the folio has been
given and the period specified in the notice pursuant to subsection
(1) has not expired.

(5) Section 28GA (2)—

At the end of section 28GA, insert:—

15 (2) Immediately after bringing land under the provisions of this
Act by creating a qualified folio of the Register for that land, the
Registrar-General shall chart on any appropriate map or plan or
otherwise record the creation of the folio.

(6) Section 28J (1A), (1B)—

After section 28J (1), insert:—

20 (1A) Where, in the opinion of the Registrar-General, any of the
documents which evidenced the title to land comprised in a qualified
folio of the Register conveyed or purported to convey the land
otherwise than for valuable consideration, the Registrar-General may,
when creating the folio, include in the caution recorded therein a
notation to that effect.

25 (1B) Where, in the opinion of the Registrar-General, the title of
the registered proprietor to land comprised in a qualified folio of the
Register depends on the operation of any statute of limitations, the
Registrar-General may, when creating the folio, include in the
caution recorded therein a notation to that effect.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(7) (a) Section 28M (3)—

5 Omit the subsection, insert instead:—

(3) Where, after land is brought under the provisions of this Act by the creation of a qualified folio of the Register, a person for valuable consideration and without fraud to which the person is a party becomes registered, or is by section 36 (8) deemed to have become registered, as proprietor of an estate or interest in the land comprised in the folio, the caution recorded in the folio—

10

(a) being a caution that does not include a notation under section 28J (1A) or (1B), lapses as regards that estate or interest—

15

(i) on the expiration of the period of 6 years that next succeeds the creation of the folio; or

(ii) at the time when the person becomes, or is deemed to have become, so registered,

20 whichever is the later; or

(b) being a caution that includes a notation under section 28J (1A) but does not include a notation under section 28J (1B), lapses as regards that estate or interest—

(i) on the expiration of the period of 6 years that next succeeds the time when the person becomes, or is deemed to have become, so registered; or

25

(ii) at such time as another person for valuable consideration and without fraud to which he or she is a party becomes, or is deemed to have become, registered as proprietor of that estate or interest,

30

whichever is the later.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(b) Section 28M (4)—

5 Omit “may apply to the Registrar-General”, insert instead “, not
being a folio affected by a notation under section 28J (1B),
may apply to the Registrar-General in the approved form”.

(c) Section 28M (4A)—

After section 28M (4), insert:—

10 (4A) Where land has been brought under the provisions of
this Act by the creation of a qualified folio of the Register and
after the expiration of the period of 12 years that next succeeds
15 the creation of the folio the caution recorded in the folio has
not lapsed as regards an estate or interest in the land, the
registered proprietor of that estate or interest may apply to the
Registrar-General in the approved form for cancellation of the
caution to the extent that it affects that estate or interest, and
the Registrar-General may cancel the caution to that extent if
20 the Registrar-General is satisfied that by virtue of any statute
of limitations that estate or interest is held free from any
subsisting interests, other than those referred to in subsection
(6).

(d) Section 28M (5)—

Omit “or (8)”, insert instead “, (8) or (8A)”.

25 (e) Section 28M (6)—

After “(4)”, insert “, (4A)”.

(f) Section 28M (8)—

After “caution” where secondly occurring, insert “, unless it
includes a notation under section 28J (1A) or (1B)”.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

- (g) Section 28M (8A)—
5 After section 28M (8), insert:—
 (8A) Where—
 (a) after the creation of a qualified folio of the Register,
 being a folio in which is recorded a caution that
10 includes a notation under section 28J (1A), a person
 for valuable consideration and without fraud to which
 the person is a party becomes registered, or is by
 section 36 (8) deemed to have become registered, as
 proprietor of an estate or interest in the land
 comprised in the folio; and
15 (b) immediately before the expiration of the period of
 12 years that next succeeds the time when the person
 becomes, or is deemed to have become, so registered,
 the caution has not lapsed as regards that estate or
 interest or been cancelled,
20 the caution, unless it includes a notation under section 28J
 (1B), lapses as regards that estate or interest on the expiration
 of that period.
- (h) Section 28M (9)—
 After “(8)”, insert “or (8A)”.
- 25 (i) Section 28M (9)—
 After “land” where firstly occurring, insert “, estate or interest”.
- (j) Section 28M (10)—
 Omit “and (9)”, insert instead “, (8A) and (9)”.
- (8) (a) Section 28P (1)—
30 Omit “subsection (2) and any other provision of this Part”,
 insert instead “this Act”.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(b) Section 28P (2), (3)—

5 Omit the subsections.

(9) Section 28QA—

After section 28Q, insert:—

Information and production of documents.

10 28QA. (1) The Registrar-General, for the purpose of bringing
land under the provisions of this Act in accordance with this Part,
may—

(a) retain any deed lodged in the office of the Registrar-
General which purports to convey or vest any estate or
interest in the land;

15 (b) require persons lodging any such deed to furnish a
statement in the approved form supplying the particulars
therein requested in relation to any such estate or interest;
and

20 (c) by notice in writing served on any person, require the
person to produce within a period specified in the notice,
being a period expiring not earlier than one month after the
date of the notice, any deed or other document or certificate
which the person is able to produce and particulars whereof
are specified in the notice, being a deed, document or
25 certificate relating to any estate or interest in the land.

(2) Any person who wilfully refuses or neglects to comply
with any requirement under subsection (1) or who makes any
statement pursuant to such a requirement that, to the person's
knowledge, is false or misleading in a material particular shall be
guilty of a misdemeanour and shall be liable therefor to the penalty
30 or punishment provided by section 141 (1).

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(10) Section 32 (2A)—

5 After section 32 (2), insert:—

(2A) Subsection (1) (c) applies, in the case of a qualified folio of the Register, subject to the provisions of section 28I.

(11) Section 43 (2)—

At the end of section 43, insert:—

10 (2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(12) Section 43A (4)—

After section 43A (3), insert:—

15 (4) Nothing in subsection (2) or (3) operates to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(13) Section 44 (2)—

At the end of section 44, insert:—

20 (2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(14) Section 72 (1A)—

After section 72 (1), insert:—

25 (1A) Where in any caveat lodged in respect of land comprised in a qualified folio of the Register the caveator claims a subsisting interest, within the meaning of Part IVA, in that land, that caveat shall

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

5 be deemed to prohibit the cancellation of the caution recorded in that qualified folio of the Register 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.

(15) Section 76A—

After section 76, insert:—

10 **Additional implied covenants in respect of land in a qualified folio.**

15 76A. In every instrument registered under this Act creating or transferring any estate or interest in land comprised in a qualified folio of the Register, there shall be implied, in addition to the covenants implied by this Part, such covenants as are set forth by section 78 of the Conveyancing Act, 1919, and as would have been implied in respect of any subsisting interest, within the meaning of Part IVA, in that land if the instrument has 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
20 the transaction.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE.

25 (1) Section 1—

Omit the matter relating to Part IVB, insert instead:—

PART IVB.—LIMITED FOLIOS OF THE REGISTER.—ss. 28S–28ZD.

DIVISION 1.—*Creation of limited folios.*—ss. 28S–28U.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

DIVISION 2.—*Delimitation plans.*—ss. 28V–28X.

5 DIVISION 3.—*Caveats against delimitation plans.*—ss. 28Y–
28ZB.

DIVISION 4.—*Other provisions relating to limited folios.*—ss.
28ZC, 28ZD.

(2) Section 3 (1), definition of “Limited folio”—

10 After the definition of “Land”, insert:—

“Limited folio”—A folio of the Register that includes a recording
under section 28T (4) that has not been cancelled.

(3) Section 12 (1A)—

15 After “application”, insert “or to register a plan of survey lodged for
the purposes of section 28V”.

(4) Section 14A—

After section 14, insert:—

Consolidation with adjoining land in certain cases.

20 14A. (1) Where application is made under section 14 by the
registered proprietor of an estate in fee simple in any land claiming,
by reason of possession and by virtue of any statute of limitations,
title to the like estate in the whole or part of any adjoining land
comprised in a limited folio of the Register adverse to or in derogation
of the title of the registered proprietor thereof, the Registrar-General
25 may require the application to be accompanied by a plan of survey
comprising the land the subject of the claim and the applicant’s
adjoining land.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

5 (2) Such an application may be granted by recording the applicant in the Register as the proprietor in fee simple of the whole of the land comprised in the plan of survey.

10 (3) Upon the granting of the application, the land to which title was therein claimed shall cease to be subject to any registered encumbrances, liens, interests and burdens previously affecting it and shall cease to have the benefit of any rights, privileges, benefits or easements previously attached thereto, but shall become subject to the same encumbrances, liens, interests and burdens and shall have attached thereto the same rights, privileges, benefits and easements as the applicant's adjoining land.

15 (4) Section 114 (2) applies to and in respect of a requirement made by the Registrar-General under subsection (1) in the same way as it applies to and in respect of a requirement under section 114 (1).

(5) Part IVB, Division 1, heading—

20 Before section 28s, insert:—

DIVISION 1.—*Creation of limited folios.*

25 (6) (a) Section 28s (1), definitions of “delimitation condition”, “exemption certificate”, “limited folio of the Register”, “occupational boundary”, “ordinary folio of the Register”, “qualified folio of the Register”, “valuable consideration”—

Omit the definitions.

(b) Section 28s (1), definition of “delimitation plan”—

Before the definition of “land under common law title”, insert:—

30 “delimitation plan” means a plan of survey lodged for the purposes of section 28v;

*Real Property (Conversion of Title) Amendment.*SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

- (c) Section 28s (1), definition of “limitation”—
5 After the definition of “land under common law title”, insert:—
 “limitation” means a recording referred to in section 28T (4);
- (d) Section 28s (1), definition of “plan of survey”—
 Before the definition of “registered deed”, insert:—
10 “plan of survey” means a plan of survey within the meaning
 of the Survey Practice Regulations, 1933;
- (e) Section 28s (2)—
 Omit the subsection.
- (7) (a) Section 28T (4)—
 Omit the subsection, insert instead:—
15 (4) When creating a folio of the Register under subsection
 (1), (2) or (3), the Registrar-General shall make in that folio
 a recording to the effect that the description of the land com-
20 prised therein has not been investigated by the Registrar-General
 and may therein or in any plan deposited in the Registrar-
 General’s office illustrating the land so comprised record such
 other particulars as the Registrar-General considers appropriate.
- (b) Section 28T (8) (d) (i)—
 Omit “any boundary that is subject to a delimitation condition”,
 insert instead “the boundaries of the land comprised therein”.
- 25 (8) Section 28U—
 Omit the section, insert instead:—
 Defeasibility of limited title.
 28U. (1) Section 12 (3) (b) does not apply to or in respect of a
30 correction made by the Registrar-General of any wrong description of
 parcels or of boundaries in relation to land included in a limited folio
 of the Register.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

5 (2) Where by any wrong description of parcels or of boundaries any land is incorrectly included in a limited folio of the Register, section 42 (1) does not operate to defeat any estate or interest in that land adverse to or in derogation of the title of the registered proprietor and not recorded in the folio, whether or not
10 the registered proprietor is a purchaser or mortgagee of that land for value or derives his title from such a purchaser or mortgagee.

(9) Part IVB, Divisions 2, 3 and 4—

Omit sections 28v–28z, insert instead:—

DIVISION 2.—*Delimitation plans.***Removal of limitation.**

15 28v. (1) Upon the lodgment in the office of the Registrar-General of—

- 20 (a) a plan of survey complying with the regulations and adequately defining the boundaries of the land comprised in a limited folio of the Register;
- (b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land comprised in the folio; and
- 25 (c) such other evidence as the Registrar-General may in any case require,

the Registrar-General may, subject to this Act, register the plan of survey and cancel the limitation recorded in the folio.

30 (2) Where the Registrar-General intends to register a plan lodged for the purposes of this section and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention he shall, in the notice, specify a period (expiring not earlier than one month after the date of the notice) before the expiration of which the plan will not be registered.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.***Restrictions on registration of delimitation plan.**

5 28w. The Registrar-General shall not register a delimitation plan—

- (a) if a notice referred to in section 28v (2) has been given and the period specified therein has not expired; or
- 10 (b) if there is in force a caveat forbidding the registration of the plan.

Withdrawal of delimitation plan.

15 28x. (1) A person who lodges a delimitation plan may withdraw the plan before it is registered and, where the plan is so withdrawn, the Registrar-General, when requested in writing so to do, shall return to the person who lodged it, or to the person appearing to the Registrar-General to be entitled thereto, the plan and any documents lodged therewith.

- (2) If it appears to the Registrar-General—
- 20 (a) that a person who has lodged a delimitation plan has not complied, or has unreasonably delayed in complying, with the requirements of the Registrar-General relating to the registration of the plan; or
- (b) that the evidence adduced by any such person in compliance with any such requirement is deficient in any
- 25 material particular,

the Registrar-General may refuse to register the plan.

DIVISION 3.—*Caveats against delimitation plans.***Interested person may lodge caveat.**

30 28y. (1) A person claiming an estate or interest in land the subject of a delimitation plan may, at any time before the plan is registered, lodge with the Registrar-General a caveat in the approved form forbidding the registration of the plan.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

5 (2) The provisions of section 72 (2), (3), (4) and (6) apply to and in respect of a caveat referred to in subsection (1) in the same way as they apply to and in respect of a caveat referred to in section 72.

Lapse of caveats.

10 28Z. A caveat lodged under section 28Y (1) forbidding the registration of a delimitation plan lapses 3 months after it is lodged unless the caveator has, within that time—

15 (a) taken proceedings in any court of competent jurisdiction to establish his or her title to the estate or interest therein specified and given written notice of the proceedings to the Registrar-General; or

20 (b) obtained from the Supreme Court an order or injunction restraining the Registrar-General from registering the plan, either absolutely or until the further order of the Court, and served the order or injunction on or given written notice thereof to the Registrar-General,

and those proceedings have not been determined (otherwise than in favour of the caveator) or, as the case may be, that order or injunction is still in force.

Stated case.

25 28ZA. (1) Where a caveat against the registration of a delimitation plan has been lodged by a caveator claiming the land the subject of the plan or a portion thereof or an interest therein adversely to the registered proprietor of the land comprised in the limited folio to which the delimitation plan relates, the registered proprietor may

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

5 state a case for the opinion and direction of the Supreme Court upon the matter, and the caveator may apply for an injunction until the further order of the Court, and the Court may direct the caveator to lodge with the Court, on or before a certain day, a case on the caveator's own behalf, together with such other particulars (if any) as the Court thinks fit to order.

10 (2) The Court shall determine any facts in contest and may add to or alter the stated case in accordance with any such determination.

15 (3) The Court shall decide the stated case or, if the stated case has been added to or altered in accordance with subsection (2), the stated case as added to or altered, and the decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar-General.

Where caveator fails to prosecute proceedings.

20 28ZB. Where proceedings referred to in section 28ZA with respect to a delimitation plan have not, within such time as to the Registrar-General appears reasonable in the circumstances, been continued to such a stage as to have resulted in a decision, judgment or order by the court in which the proceedings are pending, the Registrar-General, on giving one month's notice to the caveator or to any solicitor, agent or attorney of the caveator who appears to the Registrar-General to have signed the caveat of intention to proceed, or if neither of those courses is practicable, then on posting or exhibiting on the land to which the caveat relates for a period of 30 days notice of intention to proceed, may proceed to register the plan unless in the meantime an order or injunction restraining the Registrar-General from further proceeding with registration of the plan has been served on the Registrar-General.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*DIVISION 4.—*Other provisions relating to limited folios.*5 **Certain proceedings against Registrar-General barred.**

28ZC. Notwithstanding the provisions of Part XIV, no proceedings shall be brought, and no action shall lie, against the Registrar-General for any refusal to create a limited folio of the Register or to cancel a limitation.

10 **Information and production of documents.**

28ZD. (1) The Registrar-General, for the purpose of bringing land under the provisions of this Act in accordance with this Part, may—

- 15 (a) retain any deed lodged in the office of the Registrar-General which purports to convey or vest any estate or interest in the land;
- (b) require persons lodging any such deed to furnish a statement in the approved form supplying the particulars therein requested in relation to any such estate or interest;
- 20 and
- (c) by notice in writing served on any person, require the person to produce within a period specified in the notice, being a period expiring not earlier than one month after the date of the notice, any deed or other document or certificate which the person is able to produce and particulars whereof are specified in the notice, being a deed,
- 25 document or certificate relating to any estate or interest in the land.

30 (2) Any person who wilfully refuses or neglects to comply with any requirement under subsection (1) or who makes any statement pursuant to such a requirement that, to the person's 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 section 141 (1).

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

- (10) Section 36 (1), definition of “caveat”—
5 After “section”, insert “28y.”.
- (11) Section 45D (1) (c)—
 After “qualified” wherever occurring, insert “or limited”.
- (12) Section 72 (1B)—
 Before section 72 (2), insert:—
- 10 (1B) Where in any caveat lodged in respect of land comprised in
 a limited folio of the Register the caveator claims an estate or interest
 in the whole or part of the land, that caveat shall be deemed to
 prohibit the cancellation, in consequence of the registration under
15 section 28v of a plan of survey lodged at any time after the lodgment
 of the caveat, of the recording made under section 28T (4) in the
 folio of the Register and, for the purposes of this Division, the
 lodgment of any such plan of survey shall be deemed to be an
 application for registration of a dealing.

SCHEDULE 3.

20 (Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE.

- (1) Section 3 (1), definition of “Ordinary folio”—
 After the definition of “Mortgagee”, insert:—
- 25 “Ordinary folio”—A folio of the Register that is neither a limited
 folio nor a qualified folio.

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

(2) Section 14 (8)–(11)—

5 After section 14 (7), insert:—

(8) In this section, “land not subject to the provisions of this Act” shall be deemed to include land comprised in a qualified folio of the Register, and an application for the creation of an ordinary folio of the Register in respect of any such land may be
10 made—

(a) by the registered proprietor of the land;

(b) by any other person referred to in subsection (2); or

(c) where a mortgage or charge is recorded in the qualified folio of the Register, by the mortgagee or chargee
15 thereunder.

(9) An application under subsection (8) 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.

(10) Without prejudice to the operation of subsection (9), an application made under subsection (8) in respect of land comprised in a qualified folio of the Register shall, where that folio is a limited folio, be accompanied by—
20

(a) a plan of survey complying with the regulations and adequately defining the boundaries of the land; and

(b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land.
25

(11) The Registrar-General may, pursuant to an application under subsection (8)—

(a) cancel the qualified folio of the Register for the land and create an ordinary folio of the Register for the land; or
30

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

- 5 (b) cancel the caution recorded under section 28J (1) in the qualified folio and any recording made therein under section 28T (4).

(3) Section 45c (2)—

At the end of section 45c, insert:—

- 10 (2) Subsection (1) does not prevent the acquisition of a title, adverse to or in derogation of the title of the registered proprietor thereof, to an estate or interest in land brought under the provisions of this Act by the creation of a qualified or limited folio of the Register by reason of possession of the land for any length of time commencing before the creation of the folio.

15 (4) Section 124 (2)—

At the end of section 124, insert:—

- (2) Subsection (1) does not operate to defeat—
- 20 (a) any proceedings or action for the recovery of land for which a qualified folio of the Register has been created, being proceedings or an action based on a subsisting interest within the meaning of Part IVA; or
- 25 (b) any proceedings or action brought by a person deprived of, or claiming, any land included in a limited folio of the Register for other land by misdescription of that other land or of its boundaries, whether or not the registered proprietor of that other land is a transferee thereof bona fide for value.

(5) (a) Section 144 (1) (b)—

Omit “and” where lastly occurring.

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

(b) Section 144 (1) (c)—

5

Omit “waived.” insert instead “waived; and”.

(c) Section 144 (1) (d)—

After section 144 (1) (c), insert:—

10

(d) the circumstances in which a plan lodged for registration shall be, or may be required by the Registrar-General to be, a plan of survey within the meaning of the Survey Practice Regulations, 1933.

SCHEDULE 4.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

15 (1) Section 28c (1) (b)—

Omit “of law”, insert instead “in law”.

(2) Section 28M (4)—

Omit “subsection (3)”, insert instead “subsection (3A)”.

(3) Section 39A (6A), (6B)—

20

After section 39A (6), insert:—

(6A) Where, before the commencement of this section, land affected by a prescribed instrument was brought under the provisions of this Act by the creation of a folio of the Register for the estate or

*Real Property (Conversion of Title) Amendment.*SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

5 interest of the mortgagee or chargee entitled under the instrument, the Registrar-General may, upon application made in the approved form by the mortgagor or charger under the instrument or another person claiming title under such a mortgagor or charger, and with the consent of the mortgagee or chargee, amend the Register by registering the applicant as the proprietor of that estate or interest.

10 (6B) Where, by amendment of the Register under subsection (6A), a person other than the mortgagee or chargee under a prescribed instrument is registered as the proprietor of an estate or interest in any land affected by the instrument, subsections (2), (3), (4), (5) and (7) apply to and in respect of the instrument and any recording thereof in the Register in the same way as those subsections
15 apply to and in respect of such an instrument and the recording thereof where a person other than the mortgagee or chargee under such an instrument becomes registered for such an estate or interest in the course of creating a folio of the Register for the purpose of bringing land so affected under the provisions of this Act.

20 (4) Section 45E (3) (b)—
Omit “or 45F (2)”.

(5) Section 45F—

Omit the section, insert instead:—

Restrictions on grant of possessory applications.

25 45F. The Registrar-General shall not grant a possessory application—

- (a) if a notice referred to in section 45E (2) has been given and the period specified therein has not expired; or
30 (b) if there is in force a caveat forbidding the grant of the application.

Real Property (Conversion of Title) Amendment.

SCHEDULE 4—*continued.*

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 45G (3)—

Omit the subsection.

5 (7) (a) Section 45I (1)—

Omit the subsection.

(b) Section 45I (2)—

10 Omit “Where a caveat forbidding the grant of a possessory application is lodged under section 45H (1) more than 3 years after the commencement of this Part, the caveat”, insert instead “A caveat lodged under section 45H (1) forbidding the grant of a possessory application”.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1984

(\$1.50)

**REAL PROPERTY (CONVERSION OF TITLE)
AMENDMENT ACT, 1984, No. 25**

New South Wales



ANNO TRICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 25, 1984.

An Act to amend the Real Property Act, 1900, with respect to qualified folios and limited folios of the Register and for other purposes. [Assented to, 6th June, 1984.]

Real Property (Conversion of Title) Amendment.

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:—

Short title.

1. This Act may be cited as the "Real Property (Conversion of Title) Amendment Act, 1984".

Commencement.

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

Principal Act.

3. The Real Property Act, 1900, is referred to in this Act as the Principal Act.

Schedules.

4. This Act contains the following Schedules:—

SCHEDULE 1.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO QUALIFIED TITLE.

SCHEDULE 2.—AMENDMENTS TO THE PRINCIPAL ACT RELATING TO LIMITED TITLE.

SCHEDULE 3.—AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED TITLE AND TO LIMITED TITLE.

SCHEDULE 4.—MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

Real Property (Conversion of Title) Amendment.

Amendment of Act No. 25, 1900.

5. The Principal Act is amended in the manner set forth in Schedules 1-4.

SCHEDULE 1.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE.

- (1) Section 3 (1), definition of "Qualified folio"—
After the definition of "Proprietor", insert:—
"Qualified folio"—A folio of the Register in which is recorded a
caution under section 28J that has not been cancelled.
- (2) Section 12 (1) (h)—
Omit "(other than advertisements referred to in section 28G (c))".
- (3) Section 28A, definitions of "Ordinary folio of the Register", "Qualified
folio of the Register"—
Omit the definitions.
- (4) Section 28G—
Omit the section, insert instead:—

Restriction on creation of qualified folio.

28G. (1) Where the Registrar-General intends to bring land under the provisions of this Act by creating a qualified folio of the Register for that land and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention the Registrar-General shall, in the notice,

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

specify a period (expiring not earlier than one month after the date of the notice) before the expiration of which that folio will not be created.

(2) The Registrar-General shall not create a qualified folio of the Register if notice of intention to create the folio has been given and the period specified in the notice pursuant to subsection (1) has not expired.

(5) Section 28GA (2)—

At the end of section 28GA, insert:—

(2) Immediately after bringing land under the provisions of this Act by creating a qualified folio of the Register for that land, the Registrar-General shall chart on any appropriate map or plan or otherwise record the creation of the folio.

(6) Section 28J (1A), (1B)—

After section 28J (1), insert:—

(1A) Where, in the opinion of the Registrar-General, any of the documents which evidenced the title to land comprised in a qualified folio of the Register conveyed or purported to convey the land otherwise than for valuable consideration, the Registrar-General may, when creating the folio, include in the caution recorded therein a notation to that effect.

(1B) Where, in the opinion of the Registrar-General, the title of the registered proprietor to land comprised in a qualified folio of the Register depends on the operation of any statute of limitations, the Registrar-General may, when creating the folio, include in the caution recorded therein a notation to that effect.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(7) (a) Section 28M (3)—

Omit the subsection, insert instead:—

(3) Where, after land is brought under the provisions of this Act by the creation of a qualified folio of the Register, a person for valuable consideration and without fraud to which the person is a party becomes registered, or is by section 36 (8) deemed to have become registered, as proprietor of an estate or interest in the land comprised in the folio, the caution recorded in the folio—

- (a) being a caution that does not include a notation under section 28J (1A) or (1B), lapses as regards that estate or interest—
- (i) on the expiration of the period of 6 years that next succeeds the creation of the folio; or
 - (ii) at the time when the person becomes, or is deemed to have become, so registered,

whichever is the later; or

- (b) being a caution that includes a notation under section 28J (1A) but does not include a notation under section 28J (1B), lapses as regards that estate or interest—
- (i) on the expiration of the period of 6 years that next succeeds the time when the person becomes, or is deemed to have become, so registered; or
 - (ii) at such time as another person for valuable consideration and without fraud to which he or she is a party becomes, or is deemed to have become, registered as proprietor of that estate or interest,

whichever is the later.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(b) Section 28M (4)—

Omit “may apply to the Registrar-General”, insert instead “, not being a folio affected by a notation under section 28J (1B), may apply to the Registrar-General in the approved form”.

(c) Section 28M (4A)—

After section 28M (4), insert:—

(4A) Where land has been brought under the provisions of this Act by the creation of a qualified folio of the Register and after the expiration of the period of 12 years that next succeeds the creation of the folio the caution recorded in the folio has not lapsed as regards an estate or interest in the land, the registered proprietor of that estate or interest may apply to the Registrar-General in the approved form for cancellation of the caution to the extent that it affects that estate or interest, and the Registrar-General may cancel the caution to that extent if the Registrar-General is satisfied that by virtue of any statute of limitations that estate or interest is held free from any subsisting interests, other than those referred to in subsection (6).

(d) Section 28M (5)—

Omit “or (8)”, insert instead “, (8) or (8A)”.

(e) Section 28M (6)—

After “(4)”, insert “, (4A)”.

(f) Section 28M (8)—

After “caution” where secondly occurring, insert “, unless it includes a notation under section 28J (1A) or (1B),”.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(g) Section 28M (8A)—

After section 28M (8), insert:—

(8A) Where—

- (a) after the creation of a qualified folio of the Register, being a folio in which is recorded a caution that includes a notation under section 28J (1A), a person for valuable consideration and without fraud to which the person is a party becomes registered, or is by section 36 (8) deemed to have become registered, as proprietor of an estate or interest in the land comprised in the folio; and
- (b) immediately before the expiration of the period of 12 years that next succeeds the time when the person becomes, or is deemed to have become, so registered, the caution has not lapsed as regards that estate or interest or been cancelled,

the caution, unless it includes a notation under section 28J (1B), lapses as regards that estate or interest on the expiration of that period.

(h) Section 28M (9)—

After “(8)”, insert “or (8A)”.

(i) Section 28M (9)—

After “land” where firstly occurring, insert “, estate or interest”.

(j) Section 28M (10)—

Omit “and (9)”, insert instead “, (8A) and (9)”.

(8) (a) Section 28P (1)—

Omit “subsection (2) and any other provision of this Part”, insert instead “this Act”.

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(b) Section 28P (2), (3)—

Omit the subsections.

(9) Section 28QA—

After section 28Q, insert:—

Information and production of documents.

28QA. (1) The Registrar-General, for the purpose of bringing land under the provisions of this Act in accordance with this Part, may—

- (a) retain any deed lodged in the office of the Registrar-General which purports to convey or vest any estate or interest in the land;
- (b) require persons lodging any such deed to furnish a statement in the approved form supplying the particulars therein requested in relation to any such estate or interest; and
- (c) by notice in writing served on any person, require the person to produce within a period specified in the notice, being a period expiring not earlier than one month after the date of the notice, any deed or other document or certificate which the person is able to produce and particulars whereof are specified in the notice, being a deed, document or certificate relating to any estate or interest in the land.

(2) Any person who wilfully refuses or neglects to comply with any requirement under subsection (1) or who makes any statement pursuant to such a requirement that, to the person's 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 section 141 (1).

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

(10) Section 32 (2A)—

After section 32 (2), insert:—

(2A) Subsection (1) (c) applies, in the case of a qualified folio of the Register, subject to the provisions of section 28I.

(11) Section 43 (2)—

At the end of section 43, insert:—

(2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(12) Section 43A (4)—

After section 43A (3), insert:—

(4) Nothing in subsection (2) or (3) operates to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(13) Section 44 (2)—

At the end of section 44, insert:—

(2) Subsection (1) does not operate to defeat any claim based on a subsisting interest, within the meaning of Part IVA, affecting land comprised in a qualified folio of the Register.

(14) Section 72 (1A)—

After section 72 (1), insert:—

(1A) Where in any caveat lodged in respect of land comprised in a qualified folio of the Register the caveator claims a subsisting interest, within the meaning of Part IVA, in that land, that caveat shall

Real Property (Conversion of Title) Amendment.

SCHEDULE 1—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
QUALIFIED TITLE—*continued.*

be deemed to prohibit the cancellation of the caution recorded in that qualified folio of the Register 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.

(15) Section 76A—

After section 76, insert:—

Additional implied covenants in respect of land in a qualified folio.

76A. In every instrument registered under this Act creating or transferring any estate or interest in land comprised in a qualified folio of the Register, there shall be implied, in addition to the covenants implied by this Part, such covenants as are set forth by section 78 of the Conveyancing Act, 1919, and as would have been implied in respect of any subsisting interest, within the meaning of Part IVA, in that land if the instrument has 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.

SCHEDULE 2.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE.

(1) Section 1—

Omit the matter relating to Part IVB, insert instead:—

PART IVB.—LIMITED FOLIOS OF THE REGISTER.—*ss.* 28S–28ZD.

DIVISION 1.—*Creation of limited folios.*—*ss.* 28S–28U.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*DIVISION 2.—*Delimitation plans.*—ss. 28v–28x.DIVISION 3.—*Caveats against delimitation plans.*—ss. 28y–
28zb.DIVISION 4.—*Other provisions relating to limited folios.*—ss.
28zc, 28zd.

(2) Section 3 (1), definition of “Limited folio”—

After the definition of “Land”, insert:—

“Limited folio”—A folio of the Register that includes a recording
under section 28t (4) that has not been cancelled.

(3) Section 12 (1A)—

After “application”, insert “or to register a plan of survey lodged for
the purposes of section 28v”.

(4) Section 14A—

After section 14, insert:—

Consolidation with adjoining land in certain cases.

14A. (1) Where application is made under section 14 by the registered proprietor of an estate in fee simple in any land claiming, by reason of possession and by virtue of any statute of limitations, title to the like estate in the whole or part of any adjoining land comprised in a limited folio of the Register adverse to or in derogation of the title of the registered proprietor thereof, the Registrar-General may require the application to be accompanied by a plan of survey comprising the land the subject of the claim and the applicant's adjoining land.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

(2) Such an application may be granted by recording the applicant in the Register as the proprietor in fee simple of the whole of the land comprised in the plan of survey.

(3) Upon the granting of the application, the land to which title was therein claimed shall cease to be subject to any registered encumbrances, liens, interests and burdens previously affecting it and shall cease to have the benefit of any rights, privileges, benefits or easements previously attached thereto, but shall become subject to the same encumbrances, liens, interests and burdens and shall have attached thereto the same rights, privileges, benefits and easements as the applicant's adjoining land.

(4) Section 114 (2) applies to and in respect of a requirement made by the Registrar-General under subsection (1) in the same way as it applies to and in respect of a requirement under section 114 (1).

(5) Part IVB, Division 1, heading—

Before section 28s, insert:—

DIVISION 1.—*Creation of limited folios.*

(6) (a) Section 28s (1), definitions of “delimitation condition”, “exemption certificate”, “limited folio of the Register”, “occupational boundary”, “ordinary folio of the Register”, “qualified folio of the Register”, “valuable consideration”—

Omit the definitions.

(b) Section 28s (1), definition of “delimitation plan”—

Before the definition of “land under common law title”, insert:—

“delimitation plan” means a plan of survey lodged for the purposes of section 28v;

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

- (c) Section 28s (1), definition of “limitation”—

After the definition of “land under common law title”, insert:—
“limitation” means a recording referred to in section 28T (4);

- (d) Section 28s (1), definition of “plan of survey”—

Before the definition of “registered deed”, insert:—
“plan of survey” means a plan of survey within the meaning
of the Survey Practice Regulations, 1933;

- (e) Section 28s (2)—

Omit the subsection.

- (7) (a) Section 28T (4)—

Omit the subsection, insert instead:—

(4) When creating a folio of the Register under subsection (1), (2) or (3), the Registrar-General shall make in that folio a recording to the effect that the description of the land comprised therein has not been investigated by the Registrar-General and may therein or in any plan deposited in the Registrar-General’s office illustrating the land so comprised record such other particulars as the Registrar-General considers appropriate.

- (b) Section 28T (8) (d) (i)—

Omit “any boundary that is subject to a delimitation condition”, insert instead “the boundaries of the land comprised therein”.

- (8) Section 28U—

Omit the section, insert instead:—

Defeasibility of limited title.

28U. (1) Section 12 (3) (b) does not apply to or in respect of a correction made by the Registrar-General of any wrong description of parcels or of boundaries in relation to land included in a limited folio of the Register.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

(2) Where by any wrong description of parcels or of boundaries any land is incorrectly included in a limited folio of the Register, section 42 (1) does not operate to defeat any estate or interest in that land adverse to or in derogation of the title of the registered proprietor and not recorded in the folio, whether or not the registered proprietor is a purchaser or mortgagee of that land for value or derives his title from such a purchaser or mortgagee.

(9) Part IVB, Divisions 2, 3 and 4—

Omit sections 28v–28z, insert instead:—

DIVISION 2.—*Delimitation plans.*

Removal of limitation.

28v. (1) Upon the lodgment in the office of the Registrar-General of—

- (a) a plan of survey complying with the regulations and adequately defining the boundaries of the land comprised in a limited folio of the Register;
- (b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land comprised in the folio; and
- (c) such other evidence as the Registrar-General may in any case require,

the Registrar-General may, subject to this Act, register the plan of survey and cancel the limitation recorded in the folio.

(2) Where the Registrar-General intends to register a plan lodged for the purposes of this section and, pursuant to section 12 (1) (h) or 12 (1A), gives notice of that intention he shall, in the notice, specify a period (expiring not earlier than one month after the date of the notice) before the expiration of which the plan will not be registered.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.***Restrictions on registration of delimitation plan.**

28w. The Registrar-General shall not register a delimitation plan—

- (a) if a notice referred to in section 28v (2) has been given and the period specified therein has not expired; or
- (b) if there is in force a caveat forbidding the registration of the plan.

Withdrawal of delimitation plan.

28x. (1) A person who lodges a delimitation plan may withdraw the plan before it is registered and, where the plan is so withdrawn, the Registrar-General, when requested in writing so to do, shall return to the person who lodged it, or to the person appearing to the Registrar-General to be entitled thereto, the plan and any documents lodged therewith.

(2) If it appears to the Registrar-General—

- (a) that a person who has lodged a delimitation plan has not complied, or has unreasonably delayed in complying, with the requirements of the Registrar-General relating to the registration of the plan; or
- (b) that the evidence adduced by any such person in compliance with any such requirement is deficient in any material particular,

the Registrar-General may refuse to register the plan.

DIVISION 3.—*Caveats against delimitation plans.***Interested person may lodge caveat.**

28y. (1) A person claiming an estate or interest in land the subject of a delimitation plan may, at any time before the plan is registered, lodge with the Registrar-General a caveat in the approved form forbidding the registration of the plan.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

(2) The provisions of section 72 (2), (3), (4) and (6) apply to and in respect of a caveat referred to in subsection (1) in the same way as they apply to and in respect of a caveat referred to in section 72.

Lapse of caveats.

28z. A caveat lodged under section 28y (1) forbidding the registration of a delimitation plan lapses 3 months after it is lodged unless the caveator has, within that time—

- (a) taken proceedings in any court of competent jurisdiction to establish his or her title to the estate or interest therein specified and given written notice of the proceedings to the Registrar-General; or
- (b) obtained from the Supreme Court an order or injunction restraining the Registrar-General from registering the plan, either absolutely or until the further order of the Court, and served the order or injunction on or given written notice thereof to the Registrar-General,

and those proceedings have not been determined (otherwise than in favour of the caveator) or, as the case may be, that order or injunction is still in force.

Stated case.

28ZA. (1) Where a caveat against the registration of a delimitation plan has been lodged by a caveator claiming the land the subject of the plan or a portion thereof or an interest therein adversely to the registered proprietor of the land comprised in the limited folio to which the delimitation plan relates, the registered proprietor may

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

state a case for the opinion and direction of the Supreme Court upon the matter, and the caveator may apply for an injunction until the further order of the Court, and the Court may direct the caveator to lodge with the Court, on or before a certain day, a case on the caveator's own behalf, together with such other particulars (if any) as the Court thinks fit to order.

(2) The Court shall determine any facts in contest and may add to or alter the stated case in accordance with any such determination.

(3) The Court shall decide the stated case or, if the stated case has been added to or altered in accordance with subsection (2), the stated case as added to or altered, and the decision of the Court finally upon the matter shall be conclusive on the parties and on the Registrar-General.

Where caveator fails to prosecute proceedings.

28ZB. Where proceedings referred to in section 28ZA with respect to a delimitation plan have not, within such time as to the Registrar-General appears reasonable in the circumstances, been continued to such a stage as to have resulted in a decision, judgment or order by the court in which the proceedings are pending, the Registrar-General, on giving one month's notice to the caveator or to any solicitor, agent or attorney of the caveator who appears to the Registrar-General to have signed the caveat of intention to proceed, or if neither of those courses is practicable, then on posting or exhibiting on the land to which the caveat relates for a period of 30 days notice of intention to proceed, may proceed to register the plan unless in the meantime an order or injunction restraining the Registrar-General from further proceeding with registration of the plan has been served on the Registrar-General.

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*DIVISION 4.—*Other provisions relating to limited folios.***Certain proceedings against Registrar-General barred.**

28ZC. Notwithstanding the provisions of Part XIV, no proceedings shall be brought, and no action shall lie, against the Registrar-General for any refusal to create a limited folio of the Register or to cancel a limitation.

Information and production of documents.

28ZD. (1) The Registrar-General, for the purpose of bringing land under the provisions of this Act in accordance with this Part, may—

- (a) retain any deed lodged in the office of the Registrar-General which purports to convey or vest any estate or interest in the land;
- (b) require persons lodging any such deed to furnish a statement in the approved form supplying the particulars therein requested in relation to any such estate or interest;
and
- (c) by notice in writing served on any person, require the person to produce within a period specified in the notice, being a period expiring not earlier than one month after the date of the notice, any deed or other document or certificate which the person is able to produce and particulars whereof are specified in the notice, being a deed, document or certificate relating to any estate or interest in the land.

(2) Any person who wilfully refuses or neglects to comply with any requirement under subsection (1) or who makes any statement pursuant to such a requirement that, to the person's 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 section 141 (1).

Real Property (Conversion of Title) Amendment.

SCHEDULE 2—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING TO
LIMITED TITLE—*continued.*

- (10) Section 36 (1), definition of “caveat”—

After “section”, insert “28Y.”.

- (11) Section 45D (1) (c)—

After “qualified” wherever occurring, insert “or limited”.

- (12) Section 72 (1B)—

Before section 72 (2), insert:—

(1B) Where in any caveat lodged in respect of land comprised in a limited folio of the Register the caveator claims an estate or interest in the whole or part of the land, that caveat shall be deemed to prohibit the cancellation, in consequence of the registration under section 28V of a plan of survey lodged at any time after the lodgment of the caveat, of the recording made under section 28T (4) in the folio of the Register and, for the purposes of this Division, the lodgment of any such plan of survey shall be deemed to be an application for registration of a dealing.

SCHEDULE 3.

(Sec. 5.)

AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE.

- (1) Section 3 (1), definition of “Ordinary folio”—

After the definition of “Mortgagee”, insert:—

“Ordinary folio”—A folio of the Register that is neither a limited folio nor a qualified folio.

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

(2) Section 14 (8)–(11)—

After section 14 (7), insert:—

(8) In this section, “land not subject to the provisions of this Act” shall be deemed to include land comprised in a qualified folio of the Register, and an application for the creation of an ordinary folio of the Register in respect of any such land may be made—

- (a) by the registered proprietor of the land;
- (b) by any other person referred to in subsection (2); or
- (c) where a mortgage or charge is recorded in the qualified folio of the Register, by the mortgagee or chargee thereunder.

(9) An application under subsection (8) 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.

(10) Without prejudice to the operation of subsection (9), an application made under subsection (8) in respect of land comprised in a qualified folio of the Register shall, where that folio is a limited folio, be accompanied by—

- (a) a plan of survey complying with the regulations and adequately defining the boundaries of the land; and
- (b) such evidence as the Registrar-General may require relating to any adverse possession of the whole or any part of the land.

(11) The Registrar-General may, pursuant to an application under subsection (8)—

- (a) cancel the qualified folio of the Register for the land and create an ordinary folio of the Register for the land; or

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*

AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

- (b) cancel the caution recorded under section 28J (1) in the qualified folio and any recording made therein under section 28T (4).
- (3) Section 45C (2)—
- At the end of section 45C, insert:—
- (2) Subsection (1) does not prevent the acquisition of a title, adverse to or in derogation of the title of the registered proprietor thereof, to an estate or interest in land brought under the provisions of this Act by the creation of a qualified or limited folio of the Register by reason of possession of the land for any length of time commencing before the creation of the folio.
- (4) Section 124 (2)—
- At the end of section 124, insert:—
- (2) Subsection (1) does not operate to defeat—
- (a) any proceedings or action for the recovery of land for which a qualified folio of the Register has been created, being proceedings or an action based on a subsisting interest within the meaning of Part IVA; or
- (b) any proceedings or action brought by a person deprived of, or claiming, any land included in a limited folio of the Register for other land by misdescription of that other land or of its boundaries, whether or not the registered proprietor of that other land is a transferee thereof bona fide for value.
- (5) (a) Section 144 (1) (b)—
- Omit “and” where lastly occurring.

Real Property (Conversion of Title) Amendment.

SCHEDULE 3—*continued.*AMENDMENTS TO THE PRINCIPAL ACT RELATING BOTH TO QUALIFIED
TITLE AND TO LIMITED TITLE—*continued.*

(b) Section 144 (1) (c)—

Omit “waived.” insert instead “waived; and”.

(c) Section 144 (1) (d)—

After section 144 (1) (c), insert:—

- (d) the circumstances in which a plan lodged for registration shall be, or may be required by the Registrar-General to be, a plan of survey within the meaning of the Survey Practice Regulations, 1933.

SCHEDULE 4.

(Sec. 5.)

MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT.

(1) Section 28C (1) (b)—

Omit “of law”, insert instead “in law”.

(2) Section 28M (4)—

Omit “subsection (3)”, insert instead “subsection (3A)”.

(3) Section 39A (6A), (6B)—

After section 39A (6), insert:—

(6A) Where, before the commencement of this section, land affected by a prescribed instrument was brought under the provisions of this Act by the creation of a folio of the Register for the estate or

Real Property (Conversion of Title) Amendment.

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

interest of the mortgagee or chargee entitled under the instrument, the Registrar-General may, upon application made in the approved form by the mortgagor or charger under the instrument or another person claiming title under such a mortgagor or charger, and with the consent of the mortgagee or chargee, amend the Register by registering the applicant as the proprietor of that estate or interest.

(6B) Where, by amendment of the Register under subsection (6A), a person other than the mortgagee or chargee under a prescribed instrument is registered as the proprietor of an estate or interest in any land affected by the instrument, subsections (2), (3), (4), (5) and (7) apply to and in respect of the instrument and any recording thereof in the Register in the same way as those subsections apply to and in respect of such an instrument and the recording thereof where a person other than the mortgagee or chargee under such an instrument becomes registered for such an estate or interest in the course of creating a folio of the Register for the purpose of bringing land so affected under the provisions of this Act.

(4) Section 45E (3) (b)—

Omit “or 45F (2)”.

(5) Section 45F—

Omit the section, insert instead:—

Restrictions on grant of possessory applications.

45F. The Registrar-General shall not grant a possessory application—

- (a) if a notice referred to in section 45E (2) has been given and the period specified therein has not expired; or
- (b) if there is in force a caveat forbidding the grant of the application.

Real Property (Conversion of Title) Amendment.

SCHEDULE 4—*continued.*MISCELLANEOUS AMENDMENTS TO THE PRINCIPAL ACT—*continued.*

(6) Section 45G (3)—

Omit the subsection.

(7) (a) Section 45I (1)—

Omit the subsection.

(b) Section 45I (2)—

Omit “Where a caveat forbidding the grant of a possessory application is lodged under section 45H (1) more than 3 years after the commencement of this Part, the caveat”, insert instead “A caveat lodged under section 45H (1) forbidding the grant of a possessory application”.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 6th June, 1984.