

2020

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**LAND TITLES (ELECTRONIC CONVEYANCING) LEGISLATION AMENDMENT
BILL 2020**

EXPLANATORY STATEMENT

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LAND TITLES (ELECTRONIC CONVEYANCING) LEGISLATION AMENDMENT BILL 2020

Outline

This explanatory statement relates to the Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020 as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

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Purpose of the Bill

The *Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020* (the Bill) is integral to establishing the legislative framework to apply the national electronic conveyancing system in the Australian Capital Territory.

This Bill, together with the companion *Electronic Conveyancing National Law (ACT) Bill 2020* to adopt the Electronic Conveyancing National Law, are regulatory reform initiatives to allow Canberrans to receive the benefit of best practice land titling processes and to increase protections against fraudulent dealings.

Presently, transfers of land ownership in the ACT require practitioners, their agents and self-represented individuals to meet face to face, complete the transfer using paper documents and lodge all dealings in person with the ACT Land Titles Office.

This situation arises as, historically, the right to deal with a parcel of land has been demonstrated through the possession of a piece of paper, the certificate of title and the physical exchange of that document between the parties to a transaction.

There are now stronger measures to protect against fraud other than a requirement to hand over a piece of paper which records an interest in land.

The amendments made by the Bill retain the central feature of the ACT land titling process, where entries on the land titles register kept by the registrar-general under the *Land Titles Act 1925* are conclusive evidence of the interests held in land under that Act, who holds those interests and that the person registered for each interest is entitled to that interest.

The amendments made by the Bill also introduce a consistent approach to provisions governing a person's capacity to create or alter an interest on the land titles register. The new framework is based on the registrar-general being prohibited from creating or altering an interest on the land titles register without verification of the person's identity and authority to undertake such a transaction. In doing so, it strengthens protections against fraud.

Further, the Bill creates the capacity for the registrar-general to make rules about verification of identity and verification of authority, which will provide clarity to self-represented and represented parties.

Human Rights Considerations

Privacy of Personal Information

The Land Titles Act authorises the registrar-general to collect the personal information for the purposes of issuing a registration under the Act. The registrar-general prevents any unreasonable intrusion into a person's privacy in accordance with the *Information Privacy Act 2014*.

Personal information, such as name and address, is included as part of a Client Authorisation Form, completion of which ensures the representative is authorised to act on the client's behalf in the conveyancing transaction. This level of information is also required under the

current paper certificate of title-based system. Collection of this data remains necessary to ensure accurate and legal transfer of title or registration of other dealings relating to land.

The registrar-general provides identifiable information to law enforcement and other Directorates that have legal authority to request information under prescribed circumstances. These agencies may also use this information to prepare and sell property sales reports to commercial organisations concerned with the development, sale or marketing of land.

Given that:

- personal information of the type that will be submitted in a physical lodgment is already publicly available;
- the Land Titles Act and Information Privacy Act allows for the lawful collection and use of personal information, and the Verification of Identity Rules imposes obligations on lawyers, mortgagees and identity agents to protect the data they obtain in preparation for a lodgment; and
- personal information is essential to effect a legal transfer of land or register other dealings;

the proposed measures will limit the right to privacy in a reasonably justified manner.

Verification of Identity

Verification of identity is an important part of the new regulatory framework. It is a process carried out to ensure that a person is who they claim to be and to reduce the risk of fraudulent land transactions. The registrar-general must not register a dealing unless the identity of a person has been verified in accordance with the verification of identity rules.

Verification of identity has the potential to engage the following rights under the *Human Rights Act 2004*:

- right to privacy (s12). The Bill, together with the verification of identity rules, sets out standards for undertaking verification of identity such as a face to face interview and checking of identity documents, and
- right to equality before the law and protection from discrimination (s8). Some sectors of the community may find it challenging to meet the verification of identity document requirements.

The requirement for verification of identity serves a legitimate objective, that is, the protection of individual land ownership from fraudulent behaviour. The measure supports the right to non-interference with home (s12) by protecting the sanctity and validity of the land titles register.

Where people are unable to establish their identity through official documents, it is possible for a subscriber to verify the identity of a person in some other way that constitutes the taking of reasonable steps. For example, it may be possible to obtain other documents which support

identity or to make inquiries with the client or a third party such as a doctor, nurse or government officer. Moreover, the introduction of verification of identity will help protect all sectors of the community against fraud, including groups who may be particularly vulnerable to fraudulent activity in an electronic environment, such as the elderly, refugees or the intellectually impaired.

The measure of verification of identity is proportionate given the 2016 case of land fraud in the ACT¹ and other instances elsewhere in Australia. Two cases of fraud in Western Australia in 2011 and 2013 prompted that jurisdiction to prioritise the introduction of verification of identity ahead of E-Conveyancing.

The measures in this Bill should also be viewed in context with regulatory reforms to extend verification of identity requirements to E-Conveyancing settlements to reduce the risk of fraud across the board. Thus, to the extent that verification of identity may engage with the rights of privacy, equality and non-discrimination, these limitations are justified.

¹ [Astell v Australian Capital Territory \[2016\] ACTSC 238](#)

Land Titles (Electronic Conveyancing) Legislation Amendment Bill 2020

Detail

Part 1 – Preliminary

Clause 1 — Name of Act

This is a technical clause that names the short title of the Act. The name of the Act will be the *Land Titles (Electronic Conveyancing) Legislation Amendment Act 2020*.

Clause 2 — Commencement

This clause provides that the Act will commence upon commencement of the *Electronic Conveyancing National Law (ACT) Act 2020*. The naming and commencement provisions will automatically commence on the notification day in accordance with section 75(1) of the *Legislation Act 2001*.

Clause 3 — Legislation Amended

This clause lists the legislation amended by the Bill. The Bill will amend the:

- *Land Titles Act 1925*, and
- *Land Titles (Unit Titles) Act 1970*.

The Note points to other legislation that would be amended consequential to commencement of the Bill, as listed in Schedule 1.

Part 2 – Land Titles Act 1925

This part makes substantive, consequential and technical changes to the *Land Titles Act 1925* that:

- retain the central feature of the ACT land titling process, where entries on the land titles register kept by the registrar-general under the *Land Titles Act 1925* are conclusive evidence of the interests held in land under that Act, who holds those interests and that the person registered for each interest is entitled to that interest
- alter the current process in the Act where the seller is under an obligation to deliver up the certificate of title to the incoming buyer, in a transfer of title, and
- introduce a consistent approach to provisions governing a person's capacity to create or alter an interest on the land titles register. The new framework is based on the registrar-general being prohibited from creating or altering an interest on the land titles register without verification of the person's identity and authority to undertake such a transaction.

This part also amends the *Land Titles Act 1925* to replace references to paper-based land title processes with references to an electronic register.

Clause 4 – Meaning of *registrable form* – Section 4(c)

This clause inserts new sections 4(c), 4(ca) and 4(cb) into the *Land Titles Act 1925*.

New section 4(c) provides that any document that is required to be produced under section 14(1)(a) or new section 14(1)(ba) is produced when the instrument is lodged before the instrument is in a registrable form. New section 14(1)(ba) is inserted by clause 6, and provides that the registrar-general may require the legal practitioner or mortgagee corporation to produce a document in relation to which certification under new section 48BA or new section 48BB is given.

New section 4(ca) provides that certification under new section 48BA or new section 48BB, or verification under new section 48BC, is provided for an instrument when the instrument is lodged before the instrument is in a registrable form.

New section 4(cb) provides that any documents required to be provided under the compliance assurance process found in new section 48BH(2) of new Part 3A of the *Land Titles Act 1925* is also an additional requirement before an instrument is in a registrable form.

New sections 48BA, 48BB, 48BC and 48BH are inserted into the *Land Titles Act 1925* by clause 31 of the Bill.

Despite this the registrar-general still has a discretion under sections 48A and 48B of the Act to accept an instrument for registration if the information described in this new section is not provided.

Clause 5 – Powers of Registrar-General – Section 14(1)(a)

This clause omits the term ‘certificate of title’ from section 14(1)(a) of the *Land Titles Act 1925* to reflect the move away from title deeds being evidence of interests in land.

Clause 6 – new section 14(1)(ba)

This clause inserts new section 14(1)(ba) into the *Land Titles Act 1925*. The new section allows the registrar-general to require production of a document in relation to which certification of identity or authority to Act was given. New sections 48BA and 48BC are inserted into the Act by clause 31 of the Bill and refer to lodgment on instruments by represented parties and lodgment by mortgagee corporations respectively.

The Note points the reader to the power of the registrar-general to also require documents from a legal practitioner or mortgagee corporation under new section 48BH. New section 48BH is inserted into the Act by clause 31 of the Bill.

Clauses 7 - 8

These clauses amend various sections of the *Land Titles Act 1925* to omit references to certificates of title.

Clause 9 – New section 14(8)

This clause inserts new section 14(8) into the *Land Titles Act 1925* to allow the registrar-general to deal with documents under the Act or another territory law electronically, or by any other means the registrar-general considers fit.

Clause 10 – Penalty for obstruction registrar-general – section 15(1)

This clause is a consequential amendment reflecting the insertion of new section 14(1)(ba) of the *Land Titles Act 1925* by clause 6 of the Bill.

Clause 11 – Land brought under Act – Section 18(2)(d)(v)

This clause substitutes new section 18(2)(d)(v) into the *Land Titles Act 1925* to allow the registrar-general to receive applications from an attorney in the ACT, acting under a Power of Attorney, of a corporation, as long as the interest in the land was registered in the name of the corporation.

Clauses 12 - 14

These clauses omit references to a certificate of title for land and substitute references to registering the applicant’s interest in the land.

Clause 15 – Section 29 heading

This clause substitutes a new heading into section 29 of the *Land Titles Act 1925*. The new heading reflects the move away from title deeds being evidence of interests in land.

Clauses 16 - 17

These clauses omit references to a certificate of title for land and substitute reference to registering the applicant's interest in the land.

Clause 18 – Part 6 heading

This clause substitutes a new heading into Part 6 of the *Land Titles Act 1925*. The new heading reflects the move away from title deeds being evidence of interests in land.

Clause 19 – Documents of title how to be dealt with – Section 35(1)

This clause omits a reference to a certificate of title for land and substitutes a reference to registering the applicant's interest in the land.

Clause 20 – Section 35(1)

This clause omits a reference to a certificate of title for land.

Clause 21 – Section 35(2)

This clause omits a reference to a certificate of title for land and substitutes a reference to the register.

Clause 22 – How certificate of title to issue in case previous death of applicants - Section 36

This clause omits section 36 of the *Land Titles Act 1925* as the operation of the electronic register renders the section redundant.

Clause 23 – Bringing under this Act of land to which State Act applies – Section 38(6)

This clause makes a technical correction so as to refer to a folio of the register, rather than a folium.

Clause 24 – Section 46 and 47

This clause substitutes new section 46 and new section 47 into the *Land Titles Act 1925*.

New section 46 is a modernisation in drafting from the old section as well as changing references to certificates of title to entries in the electronic register. New section 47 deals with when instruments lodged in accordance with the Act are taken to be registered.

New section 47(1) provides that a grant lodged for registration is taken to be registered when it is marked by the registrar-general with the folio and volume in the register.

New section 47(2) provides that a memorandum of transfer or other instrument purporting to transfer or otherwise deal in land is taken to be registered when a memorial of the instrument is entered on the folio of the register.

New section 47(3) provides that a person named in the registered grant or instrument as owning or taking possession of land, is taken to be the registered proprietor when the grant or instrument is registered.

Clause 25 – Section 47A(1)

This clause omits a reference to a folium constituted by the existing grant or certificate of title in land and substitutes the words ‘folio for the land’, so as to make the section refer to entry into the register for the land.

Clause 26 – Instruments-registration and priority – Section 48(3)

This clause inserts a Note pointing to new section 48BD of the *Land Titles Act 1925* and section 11 of the E-Conveyancing Law, which provide that witnessing is not required for instruments lodged by a legal practitioner or mortgagee corporation because certification for the instrument has been given under new section 48BD or the E-Conveyancing Law.

New section 48BD is inserted by clause 31 of the Bill, while ‘E-Conveyancing Law’ is a term inserted into the Dictionary to the Act by clause 82 of the Bill. Under that definition “E-Conveyancing Law’ means the Electronic Conveyancing National Law (ACT), made under the *Electronic Conveyancing National Law (ACT) Act 2020*.

Clause 27 – Section 48B heading

This clause substitutes a new heading into section 48B of the *Land Titles Act 1925*. The new heading reflects the move away from title deeds being evidence of interests in land and instead having instruments being in registrable form.

Clause 28 – Section 48B(2)(a)

This clause substitutes new section 48B(2)(a) into the *Land Titles Act 1925*. The new section provides a power for the registrar-general to refuse to register an instrument and to require:

- one or more parties to the instrument to alter or correct the instrument, or provide a stated document under section 14(1)(a) of the Act; or
- where an instrument has been lodged under section 48BA or 48BB, the legal practitioner or mortgagee corporation to:
 - alter or correct the instrument, or
 - provide certification under section 48BA or section 48BB in appropriate form, or
 - provided a stated document under section 14(1)(ba) of the Act.

Sections 48BA and 48BB are inserted into the *Land Titles Act 1925* by clause 31 of the Bill. Section 14(1)(ba) is inserted into the Act by clause 6 of the Bill.

Clause 29 – New section 48B(3)

This clause inserts new section 48B(3) into the *Land Titles Act 1925*. The new section explains the term *appropriate form* used in new section 48BA(2)(a)(ii)(B), a provision inserted into the Act by clause 29.

The definition of *appropriate form* of certification for an instrument lodged for registration is:

- for an instrument lodged electronically under the E-Conveyancing Law – certification that complies with the participation rules, or
- in any other case, the form required by the registrar-general.

Clause 30 – New sections 48BA to 48BI

This clause inserts nine new sections into the *Land Titles Act 1925*.

The new sections together provide an over-arching arrangement for verification of identity and authority for all property transactions, with parties providing certification to the registrar-general of matters going to their right to deal. The approach is based on the registrar-general being prohibited from creating or altering an interest on the land titles register without verification of the person's identity and authority to undertake such a transaction.

This provides certainty to self-represented applicants and to legal practitioners on the steps they need to undertake to allow for registration of an interest. The new provisions implement an approach to verification based on the Model Participation Rules found in the *Intergovernmental Agreement for an Electronic Conveyancing Model Law* done through the Council of Australian Governments in 2011.

New section 48BA applies where a legal practitioner lodges an instrument purporting to transfer or otherwise deal or affect an interest in land.

New section 48BA(2) provides the requirement that the registrar-general not register instruments relating to land unless, for each party to the instrument, the legal practitioner for the person certifies in the appropriate form that:

- the person has authorised the legal practitioner to lodge the instrument and do all other things necessary to ensure the instrument is registered
- the legal practitioner has verified the person's identity in accordance with the verification of identity rules in force at the time of verification
- the legal practitioner has verified the person's authority to deal with the land in accordance with the verification of authority rules as in force at the time of verification
- any document relevant to certification and required to be kept under the Act and, if relevant, the E-Conveyancing Law has been kept
- the legal practitioner has complied with any other requirement in relation to the instrument under the Act and, if relevant, the E-Conveyancing Law, and
- the legal practitioner has complied with any requirement prescribed by regulation.

Two technical provisions follow, specifying that:

- certification may only be done by someone with personal knowledge of the matter being certified, and
- the registrar-general may exempt a legal practitioner, or an instrument prescribed by regulation, from the certification requirement.

Finally, new section 48BA(5) provides definitions for key terms used in the section.

New section 48BB applies where a mortgagee corporation lodges, with the registrar-general, a mortgage or other instrument purporting to deal with or affect an interest in land.

New section 48BB(2) provides the requirement that the registrar-general not register instruments relating to land unless the mortgagee certifies in the appropriate form that:

- the mortgagee has verified the person's identity in accordance with the verification of identity rules in force at the time of verification
- the mortgagee has verified the person's authority to deal with the land in accordance with the verification of authority rules as in force at the time of verification
- any document relevant to certification and required to be kept under the Act and, if relevant, the E-Conveyancing Law has been kept
- the mortgagee has complied with any other requirement in relation to the instrument under the Act and, if relevant, the E-Conveyancing Law, and
- the mortgagee has complied with any requirement prescribed by regulation.

Two technical provisions follow, specifying that:

- certification may only be provided by an employee of the mortgagee corporation with personal knowledge of the matter the employee is certifying, and
- the registrar-general may exempt a mortgagee corporation, or an instrument prescribed by regulation, from the certification requirement.

Finally, new section 48BB(5) provides definitions for key terms used in the section.

New section 48BC provides a process for self-represented parties dealing in person with the registrar-general on instruments purporting to transfer or otherwise deal in land. The registrar-general must not register such an instrument unless:

- the party's identity has been verified by the registrar-general in accordance with the verification of identity rules in force at the time of verification, and
- the party's authority to deal with the land under the instrument has been verified by the registrar-general in accordance with the verification of authority rules as in force at the time of verification.

New section 48BC(3) provides a definition of *party* to an instrument and points the reader to the definitions in new section 48BA(5).

New section 48BD allows for instruments to be lodged by legal practitioners or mortgagee corporations without complying with any requirement under the *Land Titles Act 1925* that the

instrument be executed, signed, witnessed, attested or sealed. It applies where the instrument is not lodged electronically under the E-Conveyancing Law.

This provision is inserted because the legal practitioner or mortgagee corporation must comply with new section 48BA and section 48BB on matters related to authority and identity for each party, as well as certifying that requirements under the Act and the E-Conveyancing Law have been complied with. Any resulting instrument is taken to have been executed or signed by the party.

New section 48BE provides that the registrar-general may make rules about verification of identity, what documents must be kept for the purpose of verifying identity and for how long, as well as on any other relevant matter.

Such a rule is a disallowable instrument, and the Note points the reader to requirements in the *Legislation Act 2001* about notification of the instrument and presentation to the Legislative Assembly.

New section 48BF provides that the registrar-general may make rules about how verification of a person's authority to execute an instrument may be done, what documents must be kept and for how long, as well as on any other relevant matter.

Such a rule is a disallowable instrument, and the Note points the reader to requirements in the *Legislation Act 2001* about notification of the instrument and presentation to the Legislative Assembly.

In general terms new section 48BG allows for compliance audits of lodgments of instruments with the registrar-general by legal practitioners and mortgagee corporations. New section 48BF also allows for the registrar-general to require the production of documents if the lodging entity has not complied with a request for information, or if the registrar-general is reasonably satisfied that the information that has been provided is not accurate.

New section 48BG provides power for the registrar general to give a written request to a legal practitioner or mortgagee corporation to provide information about the accuracy of stated matters in an instrument, and whether sections 48BA or 48BB have otherwise been complied with. This power is enlivened if:

- an instrument is lodged by a legal practitioner or mortgagee corporation, and
- the instrument is not lodged electronically, and
- the entity provides certification in relation to the instrument as to identity verification and authority to act under new sections 48BA or 48BB of the *Land Titles Act 1925*.

Sections 48BA and 48BB are inserted into the *Land Titles Act 1925* by clause 36 of the Bill.

Under new section 48BG(3) the request from the registrar-general must state a reasonable period for the information to be provided. Under section 48BG(4) the lodging entity must provide the information in accordance with the request.

New section 48BH provides the power for the registrar-general to require compliance assurance documents from a legal practitioner or mortgagee corporation. The power is enlivened if:

- the lodging entity has not complied with a request under new section 48BG, or
- the registrar-general is reasonably satisfied that matters certified by the legal practitioner or mortgagee corporation in relation to the instrument are not accurate, or
- new sections 48BA or 48BB have not otherwise been complied with, or
- the legal practitioner's or mortgagee corporation's authorisation to use an electronic lodging network has been restricted, suspended or terminated for non-compliance with the E-Conveyancing Law.

Under new section 48BH(2) the registrar-general may, after giving the legal practitioner or mortgagee corporation at least 14 days written notice, require the legal practitioner or mortgagee corporation to provide a stated compliance assurance document. The term *compliance assurance document* is defined in new section 48BH(3) to mean a document relevant to certification of identity or authority under new sections 48BA or 48BB of the Act.

Under new section 48BH(2) the registrar-general can require these documents from the day the notice period ends until the end date stated in the notice, or until a stated event happens.

The Note to section 48BH(2) points the reader to new section 4(cb) of the Act which provides that an instrument is not in registrable form if a document required under new section 16B(2) is not provided. New section 4(cb) is inserted by clause 4 of the Bill.

New section 48BH(3) explains that new section 48BH(2) does not apply to an instrument lodged electronically under the E-Conveyancing Law.

New section 48BH(4) provides definitions of the terms *compliance assurance document* and *corresponding law*.

New section 48BI provides the registrar-general with a power to refer a matter to an appropriate authority instead of, or as well as, taking action under new section 48BH. The power is enlivened if:

- the registrar-general receives a complaint indicating that matters certified by the legal practitioner or mortgagee corporation in relation to an instrument are not accurate, or that section 48BA or section 48BB have not been complied with, or
- the registrar-general suspects that matters certified by the legal practitioner or mortgagee corporation in relation to an instrument are not accurate, or that section 48BA or section 48BB have not been complied with.

New section 48BI(3) provides that, where the registrar-general does refer a matter to an appropriate authority, the registrar-general may give that authority any information held that is reasonably relevant to the matter.

New section 48BI(4) defines the term *appropriate authority* with reference to section 35(1) of the E-Conveyancing Law, which means it includes a law enforcement agency, a regulatory body or a professional disciplinary body.

Clause 31 – Sections 49, 50 and 50A

This clause omits sections 49, 50 and 50A of the *Land Titles Act 1925* which are based on certificates of title being evidence of an interest in land. As such evidence will be in the electronic register, these provisions are redundant.

Clause 32 – Instruments not to be registered – Section 51(2)

This clause omits the words ‘the repeal day’ as that day is known to be 1 March 1999, which is substituted.

Clause 33 – Section 51(3)

This clause omits a definition of *repeal day*, which is known to be 1 March 1999.

Clause 34 – Section 52

This clause substitutes new section 52 into the *Land Titles Act 1925*. New section 52 provides that where an interest in land is registered, the registrar-general must give a certificate of title showing the interest to the party that lodged the relevant instrument. The registrar-general must also keep each registered instrument as well as any documents lodged with the instrument.

Section 52(3) explains that an instrument for the purposes of section 53 includes a caveat, grant or Crown lease.

Clauses 35 – 36

These clauses omit references to a certificate of title for land and substitute references to registering an interest in the land.

Clause 37 – Joint tenants and tenants in common – Section 54(3) and (4)

This clause omits section 54(3) and section 54(4) from the *Land Titles Act 1925*. Those sections refer to persons registered as a joint tenant or as a tenant in common being entitled to separate or duplicate certificates of title. Those interests will be included in the electronic register.

This clause also substitutes new section 54(3) into the *Land Titles Act 1925* and provides that the share of a person registered as a tenant in common must be included on the register.

Clauses 38 - 40

These clauses omit references to a certificate of title for land and substitute references to registering an interest in the land.

Clause 41 – Instruments not effectual until entry in register – section 57

This clause omits section 57 of the *Land Titles Act 1925* which provides that instruments entitled to be registered are not effectual until they are in fact registered. Section 57 is redundant because it will now be entry into an electronic register rather than possession of an instrument that establishes an interest in land.

Clauses 42 – 46

These clauses omit references to an interest constituted by a grant or a certificate of title for land in section 58 of the *Land Titles Act 1925* and substitute references to interests in the register.

Clause 47 – Sections 61 to 63

This clause omits sections 61, 62 and 63 of the *Land Titles Act 1925* which provide for certificates of title to be issued by the registrar-general on several bases. These sections are redundant because it will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 48 – Registrar-General may register as proprietor person entitled to land by operation of statute or defeasance of estate – Section 68(1)

This clause omits a reference to an interest constituted by a grant or a certificate of title for land in section 68(1) of the *Land Titles Act 1925*.

Clauses 49 - 50

These clauses variously:

- substitute *folio* for the word ‘folium’, and
- substitute *folio of the register for the land under the Crown lease* for the term ‘folium of the register constituted by the relevant certificate of title’.

Clause 51 – Memorandum of transfer – Section 73(2)

This clause substitutes new section 73(2) into the *Land Titles Act 1925*. The new section prohibits registration of a memorandum of transfer unless one of two conditions are met; either:

- the legal practitioner lodging the memorandum of transfer provides a certification under new section 48BA on matters related to identity of each party, or in the case of a mortgagee corporation lodging a memorandum of transfer, certification under section 48BB is provided; or

- the transfer has been executed by the registered proprietor and accepted by the transferee or the transferee's legal practitioner on the transferee's behalf.

The Note points to a requirement that the transferee's identity and authority to transfer the land must also be verified in accordance with new section 48BC.

Clause 52 – Section 73(3)

This clause is a technical amendment consequential to new section 73(2) inserted by Clause 59.

Clause 53 – Sections 75 and 76

This clause omits sections 75 and 76 of the *Land Titles Act 1925* which variously provide for certificates of title to be issued by the registrar-general. These sections are redundant because it will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 54 – Form of lease – Section 82(2)

This clause substitutes new section 82(2) into the *Land Titles Act 1925*. The new section makes reference to registered leases having been entered in the electronic register, rather than reference to a certificate of title.

Clause 55 – Surrender of lease – Section 86(2), new note

This clause inserts a new Note into section 86(2) of the *Land Titles Act 1925* and points the reader to other provisions under which execution of an instrument lodged for registration by a legal practitioner or mortgagee corporation is not required to be witnessed.

Clause 56 – Section 86(4)(b)

This clause substitutes a new section 86(4)(b) into the *Land Titles Act 1925* dealing with owners corporations surrendering leases on behalf of a lessee. With an electronic register the signed memorandum of surrender and evidence of a resolution by the owners corporation are all that is required for an entry in the register to be made.

Clause 57 – Land – how mortgaged or encumbered - Section 92(3)

This clause is a technical amendment omitting a reference to a certificate of title for land and substituting a reference to a land identifier. The section being amended deals with how land subject to a mortgage or encumbrance is accurately identified.

Clause 58 – Mortgage or encumbrance – postponement of priority – section 92A(3), new note

This clause inserts a new Note into section 92A(3) of the *Land Titles Act 1925* and points the reader to other provisions under which execution of an instrument lodged for registration by a legal practitioner or mortgagee corporation is not required to be witnessed.

Clause 59 – Discharge of mortgages and encumbrances – Section 101(2)(a)

This clause is a technical amendment omitting a reference to subsection (3) in section 101(2)(a) of the *Land Titles Act 1925*. Subsection (3) is repealed by clause 67.

Clause 60 – Section 101(3)

Clause 67 removes section 101(3) as it is redundant. Subsection (3) is based on a certificate of title which renders the condition found in that reference redundant

Clause 61 – Variation of mortgages – Section 101A(2), new note

This clause inserts a new Note into section 101A(2) of the *Land Titles Act 1925* and points the reader to other provisions under which execution of an instrument lodged for registration by a legal practitioner or mortgagee corporation is not required to be witnessed.

Clause 62 – No notice of trusts to be entered in register – section 124(4)

The clause substitutes the word *folio* for the word ‘folium’.

Clauses 63 to 78

These clauses omit references to an interest constituted by a grant or a certificate of title for land in several sections of the *Land Titles Act 1925* as those interests will be found in the register.

Clause 79 – Attesting of instruments – Section 173, new note

This clause inserts a new Note into section 173 of the *Land Titles Act 1925* and points the reader to other provisions under which execution of an instrument lodged for registration by a legal practitioner or mortgagee corporation is not required to be witnessed.

Clause 80 – Dictionary, note 2

This clause inserts a reference to *corporation* into Note 2 in the Dictionary to the *Land Titles Act 1925*.

Clause 81 – Dictionary, new definitions

This clause inserts a number of new definitions into the Dictionary to the *Land Titles Act 1925*.

Part 3 – Land Titles (Unit Titles) Act 1970

This part makes substantive, consequential and technical changes to the *Land Titles (Unit Titles) Act 1970* to reflect:

- entries on the land titles register kept by the registrar-general under the *Land Titles Act 1925* becoming conclusive evidence of the interests held in land under that Act, who holds those interests and that the person registered for each interest is entitled to that interest
- alterations to the current process in the *Land Titles Act 1925* where the seller is under an obligation to deliver up the certificate of title to the incoming buyer, in a transfer of title, and
- a consistent approach to provisions governing a person's capacity to create or alter an interest on the land titles register. The new framework is based on the registrar-general being prohibited from creating or altering an interest on the land titles register without verification of the person's identity and authority to undertake such a transaction.

This part also amends the *Land Titles (Unit Titles) Act 1970* to replace references to paper-based land title processes with references to the land titles register, which is kept electronically.

Clause 82 – Registration of units plan – Section 7(1)(c)

This clause omits section 7(1)(c) of the *Land Titles (Unit Titles) Act 1970*. That section refers to duplicate lease or duplicate certificate of title and are terms that are redundant. Interests in land will now be recorded in the electronic register, and it will be that record rather than possession of a certificate of title that establishes an interest in land.

Clause 83 – Section 7(1), note

This clause substitutes two new notes into section 7(1) of the *Land Titles (Unit Titles) Act 1970*. The new notes point the reader to:

- certification and verification requirements under sections 48BA, 48BB or 48BC of the *Land Titles Act 1925*
- applying for a certificate of duty under the *Duties Act 1999*, certificate of land tax and other charges under the *Land Tax Act 2004* and certificate of rates and other charges under the *Rates Act 2004*.

Clause 84 – Duties of Registrar-General after units plan registration – section 10(1)(a)

This clause omits a reference to cancellation of a certificate of title or a duplicate certificate in section 10(1)(a) of the *Land Titles (Unit Titles) Act 1970*, as the cancellation of a lease need only be recorded in the electronic register.

Clause 85 – Section 10(1)(b) and (c)

This clause substitutes new sections 10(1)(b) and (c) to the *Land Titles (Unit Titles) Act 1970* replacing references to issuing certificate of titles with references to registering interests in the electronic register under the *Land Titles Act 1925*.

Clauses 86 to 90

These clauses omit references to an interest constituted by a grant or a certificate of title for land in several sections of the *Land Titles (Unit Titles) Act 1970* as those interests will now be found in the land titles register.

Clause 91 – Section 18(2) to (4)

This clause omits sections 18(2), (3) and (4) from the *Land Titles (Unit Titles) Act 1970* which variously provide for certificates of title to be refused, issued or cancelled by the registrar-general.

These sections are redundant because it will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 92 – Registration of final building damage orders – Section 20(3)

This clause substitutes new section 20(3) into the *Land Titles (Unit Titles) Act 1970*.

The new section replaces references to the registrar-general cancelling certificates of title and then making entries into the register where the Magistrates Court issues a final building damage order, with a reference to the registrar-general making any entries necessary into the land titles register to give effect to such an order. This is because it will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 93 – Registration of termination of unit lease – Section 23(1)(a)

This clause omits section 23(1)(a) of the *Land Titles (Unit Titles) Act 1970* as that provision refers to cancellation of the certificate of title for the unit. It will now be entry into an electronic register rather than a certificate of title that establishes or removes an interest in land.

Clause 94 – Section 24

This clause substitutes new section 24 into the *Land Titles (Unit Titles) Act 1970* which deals with cancellation of memorials of termination of leases.

New section 24 provides that the registrar-general must register notice of a new unit lease in the register, as well as entering further memorials on the units plan and schedule of unit entitlements.

The note points to section 52 of the *Land Titles Act 1925* which requires that the lodging party be given a new certificate of title.

Clauses 95 to 96

These clauses omit sections 25 and 32 from the *Land Titles Act 1925* as those provisions will become redundant. It will now be entry into an electronic register rather than a certificate of title that establishes or removes an interest in land.

Clause 97 – Dictionary, note 2

This clause inserts a reference to *land titles register* into note 2.

Schedule 1 – Consequential amendments

Part 1.1 – Administration and Probate Act 1929

This part amends the *Administration and Probate Act 1929* to replace a reference to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.1 – Section 52(5)

This clause omits reference to certificate of title and substitutes reference to land being registered. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Part 1.2 – Associations Incorporation Act 1991

This part amends the *Associations Incorporation Act 1991* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.2 – Section 28(2)

This clause omits reference to a certificate of title being endorsed, and substitutes reference to a new association being entered as the registered proprietor. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.3 – Section 87

This clause omits a reference to endorsement of a certificate of title, and substitutes reference to a company being entered as the registered proprietor. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.4 – Section 92(5)

This clause omits a reference to endorsement of a certificate of title, and substitutes reference to an entity in which the property is vested as the registered proprietor. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.5 – Section 94(2)

This clause omits a reference to endorsement of a certificate of title, and substitutes reference to entering the registrar-general as the registered proprietor. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.6 – Dictionary, note 2

This clause inserts a reference to *land titles register* into note 2.

Part 1.3 - Building Act 2004

This part amends the *Building Act 2004* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.7 – Section 52, definition of *easement*, paragraph (a)

This clause removes a reference to certificate of title, and substitutes reference to land being registered on the land titles register. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.8 – Dictionary, note 2

This clause inserts a reference to *land titles register* into note 2 to the Dictionary in the *Building Act 2004*.

Part 1.4 – Building (General) Regulation 2008

This part amends the Building (General) Regulation 2008 to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clauses 1.9 – 1.10

These clauses remove references to certificate of title, and substitute references to land being registered on the land titles register. It will now be entry into an electronic register rather than possession of a certificate of title that establishes an interest in land.

Clause 1.11 – Dictionary, note 2

This clause inserts a reference to *land titles register* into note 2 to the Dictionary in the Building (General) Regulation 2008.

Clause 1.12 – Dictionary, new definition of *deposited plan*

This clause inserts a definition of *deposited plan* into the Dictionary in the Building (General) Regulation 2008. The definition draws the reader's attention to section 7 of the *Districts Act 2008* as amended by Part 7 of this Bill.

Part 1.5 - Civil Law (Sale of Residential Property) Act 2003

This part amends the *Civil Law (Sale of Residential Property) Act 2003* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.13 – Section 9(1)(b)

This clause substitutes new section 9(1)(b) into the *Civil Law (Sale of Residential Property) Act 2003* to replace references to a current edition of a certificate of title, with a reference to a current certified extract from the land titles register showing all interests affecting the property.

The term ‘land titles register’ is added to the Dictionary of the Act by Clause 1.17, and means the register kept under the *Land Titles Act 1925*, section 14.

Clause 1.14 – Sections 9(1)(d) and (e)

This clause amends sections 9(1)(d) and (e) of the *Civil Law (Sale of Residential Property) Act 2003* to replace references to a certificate of title with references to the land titles register.

Clause 1.15 – Section 9(1)(g)(iii)

This clause substitutes a new section 9(1)(g)(iii) into the *Civil Law (Sale of Residential Property) Act 2003* to replace a reference to a current edition of a certificate of title, with a reference to a certified extract from the land titles register showing all interests affecting the common property.

Clause 1.16 – Section 11(1)(a)(i)

This clause amends section 11(1)(a)(i) of the *Civil Law (Sale of Residential Property) Act 2003* to replace a reference to a certificate of title with a reference to the land titles register.

Clause 1.17 – Dictionary, note 2

This clause inserts the term *land titles register* into Note 2 of the Dictionary in the *Civil Law (Sale of Residential Property) Act 2003*. The land titles register means the register kept under the *Land Titles Act 1925*, section 14.

Part 1.6 – Community Title Act 2001

This part amends the *Community Title Act 2001* to replace references to paper-based land title processes with references to the land titles register, which is kept electronically.

Clause 1.18 - Section 17(1)(b)

This clause omits a reference to a certificate of title in the *Community Title Act 2001* and replaces it with a reference to the land titles register.

Clause 1.19 – Section 25(2)(c)

This clause substitutes a new Note in section 25(2)(c) of the *Community Title Act 2001*.

The Note references certification and verification requirements under the *Land Titles Act 1925*, sections 48BA, 48BB and 48BC. Those sections are inserted into the *Land Titles Act 1925* by clause 30 in Part 2 of the Bill.

Clause 1.20 – 1.22

These clauses omit references to a certificate of title and a register kept under the *Land Titles Act 1925* in the *Community Title Act 2001* and replaces them with reference to the land titles register.

Clause 1.23 – Dictionary, note 2

This clause inserts a reference to *land titles register* into Note 2 of the Dictionary to the *Community Title Act 2001*.

Clause 1.24 – Dictionary – definition of *lot*, paragraph (a)

This clause substitutes a new paragraph (a) into the definition of *lot* found in the Dictionary to the *Community Title Act 2001*.

Part 1.7 - Districts Act 2002

This part amends the *Districts Act 2002* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.25 – 1.26

These clauses omit references to a certificate of title and a register kept under the *Land Titles Act 1925* in the *Districts Act 2002* and replaces them with reference to the land titles register.

Part 1.8 – Legislation Act 2001

Clause 1.27 – Dictionary, part 1

This clause inserts a definition of *land titles register* into the Dictionary to the *Legislation Act 2001*.

Part 1.9 – Planning and Development Act 2007

This part amends the *Planning and Development Act 2007* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.28 – Section 251(4)

This clause omits a reference to a certificate of title and a register kept under the *Land Titles Act 1925* in the *Community Title Act 2001*, and substitutes reference to the land titles register.

Clause 1.29 – Dictionary, note 2

This clause inserts a reference to *land titles register* into Note 2 of the Dictionary to the *Planning and Development Act 2007*.

Part 1.10 – Planning and Development Regulation 2008

This part amends the Planning and Development Regulation 2008 to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clauses 1.30 – 1.31

These clauses amend the Planning and Development Regulation 2008 to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.32 – Dictionary, note 2

This clause inserts a reference to *land titles register* into Note 2 of the Dictionary to the Planning and Development Regulation 2008.

Part 11 – Retirement Villages Act 2012

This part amends the *Retirement Villages Act 2012* to replace references to paper-based land title processes with references to the land titles register kept under the *Land Titles Act 1925*.

Clause 1.34 – Section 44(1)

This clause omits a reference to a register kept under the *Land Titles Act* and replaces it with reference to the land titles register.

Clause 1.35 – Section 57(3)(b)

This clause substitutes new section 57(3)(b) into the *Retirement Villages Act 2012*.

The substituted section is about the current obligation of a resident of a retirement village rescinding a village residential contract to:

- execute all instruments needed to re-register the shares (in the case of a company title scheme) or the title, and
- give the operator the relevant share documents or certificate of title.

These provisions will become redundant as it will now be entry into an electronic register rather than a certificate of title that establishes or removes an interest in land.

New section 57(3)(b) provides similarly, but with reference to re-registration of interests in the land rather than to a certificate of title.

Part 1.12 – Unit Titles Act 2001

This part amends the *Unit Titles Act 2001* to replace current paper-based land title processes with simplified processes in relation to an owners corporation of a units plan applying for the grant of a further lease.

Clause 1.36 – Section 167A(2) to (4)

This clause replaces Unit Titles Act subsections 167A(2) to (4) with a streamlined provision, in a new subsection 167A(2).

Under the streamlined provision it will not be necessary for each owner of a unit in the units plan to hand in their certificate of title once the owners corporation agrees to seeks further leases, or to wait a month in the event that all the certificates cannot be obtained.

Instead the owners corporation must:

- Hold a general meeting
- Include in the notice of the general meeting a statement that it intends to apply for the further leases, and
- At the meeting, seek authority on behalf of each owner of a unit to surrender the lease for each unit and do anything else necessary on behalf of an owner of a unit to ensure the grant of the further leases.

The Notes to new paragraph 167A(2)(c)(i) direct the reader's attention to the requirements in the *Land Titles Act 1925* related to memorandums of surrender being accompanied by evidence of the resolution of the general meeting, and to similar requirements in the *Unit Titles (Management) Act 2011*.

The Examples to new paragraph 167A(2)(c)(ii) explain what kinds of things might be necessary to be done by the owners corporation on behalf of an owner of a unit. These are examples only and not a complete statement of all things that might be necessary to be done.