

**AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY**

**REAL PROPERTY (AMENDMENT) BILL 1993**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of**

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**Attorney General**

## REAL PROPERTY (AMENDMENT) BILL 1993

### OUTLINE

The amendments contained in the *Real Property (Amendment) Bill 1993* are designed to facilitate the computerisation of the Land Titles Register. Once the Register is fully computerised key information about land titles will be placed on computer. In this way the Register which the Registrar-General is required by the *Real Property Act 1925* to keep will itself include a computer record. The amendments contained in the *Real Property (Amendment) Bill 1993* are to remove expressions which would limit the Registrar-General to keeping paper records. Thus references to "book" and "stamped" are removed together with phrases such as "under his hand". As a result of the amendments the Registrar-General will be able to choose the medium which he or she considers most appropriate for keeping any particular record. Signatures and stamps which have to date been used for paper records will be replaced by electronic indicators.

As a result of computerisation title records will be more secure from damage as it will be much easier to duplicate the computer records and keep a copy in a secure place than is the case with paper records. Computerisation will allow fast access at a number of locations simultaneously to titles and documents related to dealings with land. Conveyancers will also be able to conduct routine searches without attending the Registrar-General's Office.

Paper copies of information contained in the computer record will, of course, be available. It is anticipated that these will be set out in a more straightforward manner than appears on the current certificates of title and will therefore be more readily understandable by members of the public.

Systems have been put in place within the Registrar-General's Office and within the computer system itself to prevent unauthorised access to the Register. This will prevent entries on the Register being tampered with or made without proper authority.

### Financial Effects

The automation project is being funded by the conveyancing community within the ACT by means of an increased fee for Titles Office services. Automation will increase efficiency within the Titles Office. As automation displaces the current manual system, staff and storage requirements for the Office will also be decreased, substantially reducing costs. Savings in excess of \$200,000 have already been achieved by the initial stages of the automation project.

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### CLAUSE NOTES

#### Clause 1: Short Title

The Act may be cited as the *Real Property (Amendment) Act 1993*.

#### Clause 2: Commencement

The Bill, apart from clauses 1 and 2 (which will commence when the Bill is Gazetted as an Act), will commence on a date to be fixed by the Minister. There is a further provision that if the date is not fixed within six months of enactment, the substantive provisions of the Act will commence automatically.

#### Clause 3: Interpretation

Clause 3 says that throughout the Bill the term "Principal Act" means the *Real Property Act 1925*.

#### Clause 4: Renumbering

The 7th and 18th Schedules to the *Real Property Act* are renumbered as Schedule 1 and Schedule 2 respectively. This is because all the other Schedules to the Principal Act are repealed by the Bill.

#### Clause 6: Savings

In order to preserve the status of the Register clause 6 provides that the Register as kept under the *Real Property Act* prior to these amendments is the same as the Register kept under the Act as amended by this Bill.

#### Clause 5: Further amendments

The amendments to the *Real Property Act* which are necessary to allow documents and records to be kept in either paper or electronic form, thereby allowing the computerisation of Registrar-General's Office procedures are set out in the Schedule to the Bill.

#### Schedule

The Schedule lists, in numerical order, the provisions of the *Real Property Act* which are to be amended together with their amendments. Many are minor word changes and technical amendments to remove phrases which would otherwise restrict the Registrar-General to using manual procedures. Descriptions of the more important changes are set out below.

- Definitions of 'computer' and 'computer folio' are inserted into the definition section, section 6, of the *Real Property Act*.
- Section 7 is inserted into the *Real Property Act* to provide that references to the seal or signature of the Registrar-General, Deputy Registrar-General or Acting

**Registrar-General** includes a reference to the electronic representation of the seal or signature.

- References to 'book' are removed from all sections where they occur.

- The phrase 'under his hand' is removed from all sections where it occurs.

- References to the forms contained in the Schedules are removed from the sections in the Principal Act where they occur. Instead of using the forms set out in the Schedules the Titles Office will accept forms approved by the Registrar-General. The provisions of the *Real Property Act* are amended to allow this. All the Schedules to the Principal Act except Schedule 7 and Schedule 18 are repealed.

- References to stamping as cancelled are changed to cancelled.

- Subsections 43(1) and (2) are replaced by new provisions which require the Registrar-General to keep a Register relating to land and allow him or her to keep it in any medium or combination of media which he or she thinks fit. These can include computer, micro film and paper. As a result the Registrar-General will be able to be flexible in choosing an appropriate medium for various records and will be able to take advantage of future technological developments.

- Subsection 44(2) of the *Real Property Act* is amended to remove the reference to binding the original certificate of title in the Register Book. The new provisions simply require that a certificate of title be delivered to the owner of the land. As the title details will be kept on computer there will be no need for an original and a duplicate certificate.

- References to entering a memorial in the Register Book are altered to refer simply to entry on the Register. The present system of stamping a memorial of a transaction on the original certificate of title bound in the Register Book will not be applicable to the computer Register where a computer entry recording each transaction will be made.

- Subsection 48(2) of the *Real Property Act*, which provides that a transferee of land is not required to present a duplicate memorandum of transfer for the purpose of registration, is omitted and replaced by a provision allowing the Registrar-General to dispense with a requirement that grants and instruments be presented in duplicate in a particular case or class of cases. This gives the Registrar-General the flexibility to dispense with the use of duplicates in the Titles Office where appropriate. The computer systems should make presentation of duplicate documents largely unnecessary.

- A new subsection 61(3) is inserted in the *Real Property Act* to provide that if several certificates are issued to replace a single one or if one certificate is issued to replace multiple certificates the Registrar-General is to issue a new certificate instead of stamping a memorandum of cancellation on the replaced certificate.

• **Section 66 of the *Real Property Act*** which deals with searches is replaced with a new section which allows for searches of the Register to be made outside office hours at times determined by the Registrar-General. It also allows the Registrar-General flexibility in providing access to the Register. Access may be provided by any means including certificate, visual display unit, computer printout, or microfiche reader. A broad definition of computer printout is also given to increase flexibility and allow for future developments.

• References to binding in a book are replaced by references to entering in a folio of the Register. This can be read as applying to inclusion in a paper form or an electronic form of the Register.

• **Section 75 of the *Real Property Act*** which deals with the procedure for dealing with a certificate of title when land is transferred, is replaced by a new **section 75**. The new provisions require the transferor to deliver the certificate of title to the Registrar-General who will issue a new certificate or certificates as required rather than, as previously, placing a memorandum of the transfer on the certificate.

• References to endorsement on duplicate leases have been removed.

• A new subsection **92A(5A)** is inserted in the *Real Property Act* to allow the Registrar-General to dispense with the requirement for provision of multiple copies of documents. This will allow the Registrar-General to take advantage of compatible imaging technology in the future.

• Subsection **102(3)** and paragraph **103(3)(c)** of the *Real Property Act* are omitted as they refer only to noting an entry made in the Register Book and are unnecessary.

• Subsection **139(3)** of the *Real Property Act* is omitted and new subsections **139(3)(4)** and **(5)** are inserted. These provisions deal with fees. The old subsection **(3)** required certain fees to be paid in advance while the new provisions allow for more flexible arrangements. They provide that the Registrar-General may require payment in advance but also allow for the Registrar-General to enter into agreements for the payment of fees. This will allow conveyancers to access the Register for searches through their own equipment on the payment of a periodic fee. The new subsection **(5)** supports this by making an amount payable under such an agreement recoverable in a court as a debt due to the Registrar-General.