

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1922.

A BILL

To provide for the issue of limited certificates of title to land; to amend the Real Property Act, 1900, and certain other Acts; and for purposes connected therewith.

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

1. (1) This Act may be cited as the "Real Property Short title. (Limited Certificates) Act, 1922," and shall be read and construed with the Real Property Act, 1900 (in this Act called the Principal Act).

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(2) This Act shall come into operation on the first day of January, one thousand nine hundred and twenty-three. Commencement.

2. In this Act, unless the context otherwise requires,— Interpretation.

“Court” means the Supreme Court of New South Wales or any judge thereof.

“First limited certificate” means a limited certificate issued under section five, subsection one, of this Act.

“Limited certificate” means a limited certificate of title under this Act.

3. Any person claiming to be entitled to an estate in fee simple in possession in the entirety of any land, may apply, in the form prescribed, to the Registrar-General, for the issue of a limited certificate of title for the estate claimed. Application for limited certificate.

4. (1) The applicant shall—

(a) deposit with the Registrar-General all instruments in the possession or power of the applicant evidencing, or in any way affecting, his title; and

(b) make and subscribe a statutory declaration of the truth of the statements in the application. Procedure on application.

(2) If the applicant is beyond the limits of New South Wales, or is a corporation, the application may be made, for and on behalf of such applicant, by attorney under power of attorney, and in such case the statutory declaration may be made by the attorney.

(3) The provisions of section one hundred and sixty-nine of the Conveyancing Act, 1919, shall apply to the statutory declaration required to be made by this section.

5. (1) The Registrar-General, without any investigation of the title of the applicant, may in his discretion issue in the name of the applicant a limited certificate, or may refuse the application without being bound to state the reason for such refusal. Issue of limited certificate discretionary.

(2) When a limited certificate is issued in the name of an applicant who has died prior to the issue of the certificate, the certificate shall have the same effect as if the applicant had died immediately after the issue of the certificate. (3)

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(3) Every limited certificate shall be in duplicate, and in or to the effect of the form in the Schedule, and shall bear upon its face in prominent and distinct characters the words "limited certificate of title." Form of limited certificate.

6. Upon the issue of a limited certificate, the Registrar-General shall endorse a notification of the issue thereof upon every instrument of title deposited which relates to land in respect of which such certificate has been issued. Issue of limited certificate to be noted upon instruments of title deposited.

7. (1) Upon the issue of a limited certificate, all instruments which have been deposited with the Registrar-General in support of the application shall be returned to the person who has deposited the same: Disposal of instruments of title deposited: Upon issue of limited certificate.

Provided that upon the request in writing of the applicant, where an instrument has been deposited by him, or, where an instrument has been deposited by any other person, upon the request in writing of the applicant and such other person, any such instrument shall be retained permanently in the office of the Registrar-General, who shall, without fee, and at all reasonable times, permit the person depositing such instrument, or his successors in title, or any person authorised in writing by him or them, to inspect the same, and such instrument shall, subject to the foregoing provision, be deemed to have been deposited under section sixty-four of the Conveyancing Act, 1919.

(2) If an application for a limited certificate is refused, all instruments deposited in support of the application shall be returned unmarked to the person by whom they were deposited. Upon refusal of application.

(3) No person other than the person making application for a limited certificate shall be entitled to require the Registrar-General to produce the application or any declaration in support thereof, or to give any information in relation thereto, except upon the order of the Court. Restriction upon production of application.

8. (1) Save as is inconsistent with this Act, the first issue of a limited certificate shall, in regard to the land therein described, have the same effect and involve the same consequences as the issue, under section twenty-one of the Principal Act, to an applicant proprietor of a certificate of title. Effect of issue of limited certificate.

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(2) For the purpose of construing any Act, land in respect of which a limited certificate exists shall be deemed to be under the provisions of the Principal Act to the extent only of the estate or interest to which the limited certificate relates, and with the modifications provided by this Act.

9. The issue of a limited certificate or the registration thereon of any person as the proprietor of any estate or interest in land to which a limited certificate relates shall not—

Limited
certificate
not to cause
deprivation.

(a) deprive any person—

- (i) of land to which he was, as against the person on whose application the first limited certificate is issued, entitled at the date of the issue of the first limited certificate; or
- (ii) of any estate, interest, or right which is superior or adverse to or in derogation of the title of such applicant, and which at that date was subsisting or capable of arising; or

(b) affect or prejudice the enforcement of any such estate, interest, or right; or

(c) alter or prejudice the rights of any person for the time being entitled to any such estate, interest, or right to deal with it or the method whereby it may devolve or be dealt with; or

(d) stop the running of any statute of limitations in favour of any person in possession at the date of the first limited certificate adversely to the person on whose application such certificate is issued.

10. (1) Any person claiming an estate, interest, or right saved by this Act may lodge with the Registrar-General a notice in the form prescribed, of the estate, interest, or right which he claims, and the Registrar-General shall make an entry of such notice in the register-book.

Notice of
claim may be
lodged.

(2) If any such notice is lodged without reasonable cause the person lodging the same shall be liable in damages, recoverable in an action at law, to any person who sustains damage by reason of the lodgment.

Liability for
improper
lodgment of
claim.

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(3) Such notice may be withdrawn by the person by whom it was lodged, and an entry of such withdrawal shall then be made in the register-book. Claim may be withdrawn.

(4) The Court may direct the Registrar-General to cancel the entry of any such notice, or to substitute such other entry as the circumstances of the case may require, and the Registrar-General shall give effect to the direction. Court may direct cancellation of entry of claim.

(5) Except as provided in this section no particulars of incumbrances, conditions, or burdens affecting the land described in the first limited certificate at the date of the issue thereof shall be entered thereon or in the register-book. No existing incumbrances to be noted upon first limited certificate.

11. If it appears to the Registrar-General, from the application for a limited certificate or otherwise, that the applicant holds the land upon any trust, the Registrar-General may require the applicant to deposit under section eighty-two of the Principal Act an attested copy of the instrument (if any) declaring or evidencing the trust. Trusts.

12. (1) Nothing in this Act shall prejudice or affect the right of any person to apply under the Principal Act for a certificate of title for any land. Act not to affect right to apply for certificate of title under Real Property Act.

(2) When a certificate of title for any land is issued under the Principal Act, every limited certificate relating to the same land, or any part thereof, shall be cancelled as to the land for which the certificate under the Principal Act is issued, and the duplicate limited certificate, until surrendered, shall be deemed to be a certificate which appears to the satisfaction of the Registrar-General to be wrongfully retained within the meaning of section one hundred and thirty-six of the Principal Act.

13. (1) When land, the subject of a limited certificate, has become vested in a Constructing Authority under Division 1, Part V, of the Public Works Act, 1912, the Registrar-General shall, when the requirements of section forty-six of that Act have been complied with, upon the application of the Constructing Authority, issue a certificate of title under the provisions of the Principal Act for an estate in fee simple in possession for the land. Resumption of land to which a limited certificate relates, procedure on.

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(2) Upon the issue of a certificate of title under this section all instruments of title to the land in the possession or power of the Constructing Authority shall be delivered to the Registrar-General for total or partial cancellation.

14. An application for a limited certificate shall not be liable to stamp duty, nor shall any assurance fee under section one hundred and nineteen of the Principal Act be payable in respect of such application.

Application for limited certificate not liable to stamp duty or assurance fee.

15. A limited certificate shall not be issued in respect of land which is held under the provisions of the Crown Lands Acts.

No limited certificate for land held under Crown Lands Acts.

16. In any case not otherwise provided for by this Act or the Principal Act, a limited certificate may be cancelled by direction of the Court.

Cancellation of limited certificate by direction of Court.

17. The Governor may make regulations as to all matters required or authorised to be prescribed by this Act, and generally as to all matters necessary or expedient for giving effect to the provisions of this Act.

Regulations.

SCHEDULE.

NEW SOUTH WALES.

L.C. Application

No.

[Royal Arms.]

Volume

Folio

Limited Certificate of Title.

Act No. , 1922.

[Name, address, and addition of proprietor], applicant for a limited Certificate of Title under the provisions of the Real Property (Limited Certificates) Act, 1922 (or transferee by Memorandum of Transfer, or otherwise, as the case may be), is now (subject to the reservations and conditions, if any, contained in the Grant hereinafter referred to, and subject also as in the notification hereunder stated, and to such encumbrances, liens, and interests as are notified by memorial underwritten or endorsed hereon) registered as the proprietor of all the estate and interest (claimed to be an estate in fee simple in possession) which became vested in [insert name of applicant for first limited certificate] by [insert particulars of assurance under which the applicant claimed, setting out date, parties and registration numbers] in all that piece of land situate in [insert sufficient description to identify the land, referring to diagram].

In witness whereof I have hereunto signed my name and affixed my seal this day of , 19 .

Registrar-General (L.S.)

Notification.

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Notification.

The title of the applicant for the first limited certificate issued in respect of the land above described to the estate and interest claimed by such applicant has not been investigated and this Certificate of Title will not deprive any person of land to which, as against such applicant, he was entitled on [*insert date of first limited certificate*], or of any estate or interest in or right in relation to the land above described superior or adverse to or in derogation of the title of such applicant and on that date subsisting or capable of arising, or affect or prejudice the enforcement of any such estate, interest or right, or alter or prejudice the rights of any person for the time being entitled to any such estate, interest or right to deal with it or the method whereby it may devolve or be dealt with, or stop the running of any Statute of Limitations in favour of any person in possession of the land at that date adversely to such applicant.

Registrar-General (L.S.).