

# **LAND TITLE AMENDMENT BILL 1994**

## **EXPLANATORY NOTES**

### **General Outline—Objectives of the Legislation**

- (i) to provide for the correction of a number of minor typographical errors in the Land Title Act; and
- (ii) to clarify the intents of a definition and a number of sections in the Land Title Act.

### **Reasons for the Bill**

The amendments proposed in the Bill are intended to allow the Land Title Act to be improved operationally by clarifying various provisions in the Land Title Act.

The opportunity has also be taken to correct a number of minor typographical errors as well an to replace words where incorrect or inappropriate words have been used.

The amendments are minor.

### **Estimated Cost for Government Implementation**

There will be no costs to the Government.

### **Consultation**

The agencies and persons consulted are the Office of the Cabinet, the Queensland Law Society and to the Australian Bankers Association.

**NOTES ON PROVISIONS**

*Clause 1* is the short title.

*Clause 2* provides that the Act shall commence on the same date as the Land Title Act 1994 commences.

*Clause 3* (1) amends the definition of "indefeasible title" to correctly refer to section 38 (Meaning of "indefeasible title") rather than section 37 (Creation of indefeasible title).

*Clause 3* (2) alters the definition of "mortgage" to allow a mortgage lodged for registration to include a covenant charging personal property, for example a boat or a car. However, registration of the instrument of mortgage will only register the charge relating to the lot or an interest in the lot referred to in the mortgage. The amendment also removes any doubt that, in addition to a charge on a lot, a mortgage may charge an interest in a lot, for example, a lease.

*Clause 3* (3) makes it clear that a writ or execution includes a warrant of execution in the District or Magistrates Court.

*Clauses 4* (1) and 4 (2) allow a person to print a form for an instrument provided the form is not sold.

*Clause 5* makes it clear that the Registrar must issue a certificate of title for a lot at the written request of the registered owner if the lot is not subject to a registered mortgage.

*Clause 6* requires the consent of a mortgagee or other registered proprietor affected by registration of a plan of subdivision of a lot to be given to the plan of subdivision.

*Clause 7* corrects a minor typographical error.

*Clause 8* (1) amends section 73(1)(c) by inserting the word "description" in place of the word "acknowledgment". This amendment more accurately reflects the true position of the mortgage debt or liability, eg. the mortgage may be given to secure unspecified future debts or contingent liabilities.

*Clause 8* (2) makes it clear that this provision refers to registered trustees and is not intended to include trusts not recorded in the register.

*Clause 9* adds a reference to an interest in a lot. This is necessary as section 72 allows an interest in a lot to be mortgaged.

*Clause 10* corrects a minor typographical error.

*Clause 11* makes it clear that a lapsing caveat may be lodged by an equitable mortgagee.

*Clause 12* adds words to make it clear that the person given the authority to operate under a power of attorney may deal with land only to the extent indicated in that instrument.

*Clause 13* makes it clear that revoking or disclaiming a power of attorney applies to all registered powers of attorney.

*Clause 14* alters the section to make it clear that the witness is only required to take reasonable steps to ensure that the individual is the person entitled to sign the instrument.

*Clause 15* omits section 179(2) to (8) as equivalent provisions have been inserted into the Statutory Instruments Act 1992 and these are therefore redundant.