

LAND TRANSFER AMENDMENT BILL

EXPLANATORY NOTE

This Bill amends the Land Transfer Act 1952.

Clause 1 relates to the Short Title.

PART I

PRESCRIPTIVE TITLE TO LAND

This Part is intended to enable title to land subject to the Land Transfer Act to be acquired by 20 years' possession where the land has been abandoned by the registered proprietor. At present, no title to any land that is subject to that Act, and no estate or interest in any such land, may be acquired by possession or use adversely to or in derogation of the title of the registered proprietor.

Clause 2 is an interpretation clause, defining the terms "application", "applicant", and "local authority" for the purposes of this Part.

Clause 3: The effect of this clause is that where any land which is subject to the Land Transfer Act and for which a certificate of title has been issued or a Crown grant has been registered has been in the exclusive possession of any person, or of any person and any one or more of his predecessors in title, continuously for a period of at least 20 years, and that possession has been adverse to that of the registered proprietor, that person may apply to the Registrar for a certificate of title for an estate in fee simple in the land.

Clause 4 provides that where the registered proprietor of, or any person shown by the register to be entitled to the benefit of, any estate or interest in any land is at the expiration of the 20-year period of possession by any other person under the disability of infancy or unsoundness of mind, application may not be made for a title under this Part until the disability ceases or the person under a disability dies.

This will not apply where the period of adverse possession exceeds 30 years.

Clause 5 provides that the application is to be examined and reported upon by the Examiner of Titles. The Registrar may require the applicant to supply further information or documents.

Clause 6 provides that the Registrar is to refuse the application, either wholly or in respect of part of the land to which it relates, if he is not satisfied that the applicant and his predecessors in title have been in possession of the land for at least 20 years or if the applicant fails to comply with a requisition for further evidence or documents under *clause 5*.

Clause 7 provides that if the Registrar is satisfied that the applicant, or the applicant and his predecessors in title, have been in possession of the land or of any part thereof continuously for at least 20 years, the Registrar is to give notice of the application by newspaper advertisement, and is to give notice of the application to persons appearing to have an estate or interest in the land or part or a claim to such an estate or interest, and may also give notice of the application in such other manner and to such other persons as the Registrar thinks fit. The notice is to fix a time, being not less than one month nor more than 12 months, after which the Registrar may, unless a caveat is lodged, proceed with the application. The Registrar may extend the time fixed.

Clause 8 provides that any person claiming any estate or interest, legal or equitable or beneficial, in the land or in any part of it may, at any time before the the time fixed under *clause 7*, lodge a caveat against the granting of the application.

Clause 9 provides that where the Registrar is satisfied that any person executing a caveat is the registered proprietor of an estate in fee simple in the land or in part thereof, or an estate for life or in remainder or an estate by way of executory limitation that has not lapsed, the Registrar must refuse the application, either wholly or in respect of that part.

Where a caveat is executed by a person purporting to be the agent of the caveator, and the caveator is the registered proprietor of an estate in fee simple in the land, or an estate for life or in remainder or an estate by way of executory limitation that has not lapsed, then, unless the Registrar is satisfied that the person executing the caveat has been duly authorised to execute it, the Registrar is to give him notice fixing a time within which he must supply confirmation that he had been authorised to execute the caveat. If he fails to supply that confirmation within the time fixed, the caveat will lapse and will have no further effect on the application. If the Registrar is satisfied that the person executing the caveat had been duly authorised to do so, the Registrar must refuse the application in respect of the land to which the caveat relates.

Clause 10 provides that where a caveat has been lodged by a person claiming to be the beneficial or equitable owner of an estate in fee simple in the land or in part thereof, or an estate for life or in remainder or an estate by way of executory limitation that has not lapsed, the Registrar, unless he is of opinion that the estate or interest claimed is sufficiently evidenced by the register, is to give notice to the caveator fixing a time, being not less than three months, within which the caveator must establish his claim in law and cause himself to be registered as the proprietor of the estate or interest claimed or satisfy the Registrar that his claim is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.

Where the Registrar is satisfied that the estate or interest claimed is sufficiently evidenced by the register, or within the time fixed the caveator causes himself to become registered as the proprietor of the estate or interest claimed in the land or in any part of it or satisfies the Registrar as aforesaid, the Registrar must refuse the application in respect of the land or of that part. If the caveator fails to do so, the caveat will lapse, and will have no further effect on the application.

Clause 11 applies in cases where a caveat has been lodged by a person who satisfies the Registrar that he is the registered proprietor of, or a person shown by the register to be entitled to claim the benefit of, an estate or interest

in the land, or in part thereof, otherwise than an estate in fee simple or an estate for life or in remainder or an estate by way of executory limitation. In such a case, the Registrar is to suspend further action on the application until the applicant agrees to take title subject to that estate or interest or the estate or interest is discharged, surrendered or otherwise extinguished.

If the caveator is a mortgagee, the applicant will be entitled to apply under section 112 of the principal Act for the mortgage to be discharged as if he were the owner of the land.

If the applicant takes title subject to the mortgage, neither he nor any person taking title under him will be personally liable under the mortgage, but the mortgagee's remedies will be limited to the land.

Clause 12 applies in cases where a caveat has been lodged by a person claiming to be the beneficial or equitable owner of any estate or interest in the land or in part thereof, other than an estate in fee simple or an estate for life or in remainder or an estate by way of executory limitation. In such a case, the Registrar, unless he is of opinion that the estate or interest claimed is sufficiently evidenced by the register, must give to the caveator a notice fixing a time, being at least three months, within which he must establish his claim in law and cause himself to be registered on the title as the proprietor of that estate or interest, or must satisfy the Registrar that his claim is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.

If the caveator fails within that period to cause himself to be so registered on the title and fails to satisfy the Registrar as aforesaid, his caveat will lapse, and will have no further effect on the application.

If the Registrar is of opinion that the estate or interest claimed is sufficiently evidenced by the register, or the caveator causes himself to be so registered on the title or satisfies the Registrar as aforesaid within the period fixed, the provisions of *clause 11* will then apply.

Clause 13 provides that if the Registrar refuses any application in whole or in part he must give notice of that refusal to the applicant.

Clause 14 provides that where the Registrar is satisfied that all notices required to be given have been given and that all times required to expire have expired, and that no caveat has been lodged against the application or that all caveats lodged have either lapsed or been withdrawn or relate to part only of the land, the Registrar is to give to the applicant a notice requiring him to either—

- (a) Supply a certificate by a registered surveyor that the occupation boundaries of the land, or, as the case may be, of so much of the land as remains subject to the application coincide with the title boundaries;
- or
- (b) Deposit a plan of survey of the land or of so much thereof as remains subject to the application.

The clause specifies the boundaries that are to be drawn on any such plan of survey, having regard to the situation of occupation boundaries in relation to title boundaries.

Clause 15 provides that where the applicant supplies a certificate or deposits a plan of survey as required by *clause 14*, and the Registrar and Examiner are satisfied that the applicant would, if the land had not been subject to the principal Act, have been entitled on the grounds of possession to the issue of a certificate of title under section 19 of that Act and that no sufficient

reason to the contrary otherwise appears, the Registrar is to issue to the applicant a certificate of title to the land, or to so much thereof as remains subject to the application as defined in the plan deposited under *clause 14*.

Clause 16 provides that where a plan of survey deposited under *clause 15* discloses that the occupation boundary is within the title boundary and for that reason the certificate of title issued to the applicant does not include the land between the occupation boundary and the title boundary, the Registrar may amalgamate the intervening strip in the title to the adjoining land if he is satisfied that the occupier of that adjoining land also occupies the intervening strip by reason solely of the fact that—

- (a) A fence, wall, hedge, building, ditch, or other artificial means of marking the boundary which purports to be and was intended to be on the common boundary of the adjoining land and the intervening strip is not on the common boundary; or
- (b) Where the occupation boundary is a natural feature of the land, that feature is in close proximity to the title boundary.

Clause 17 applies in cases where an application is made in respect of land of which the registered proprietor is a company or other corporate body that has been dissolved and the property of which has become vested in the Crown as *bona vacantia*.

The clause provides that the Registrar is not to proceed with the application until the land has been disclaimed by the Crown. Where proceedings have been commenced in any Court under any other Act by any person to become the registered proprietor of the land, the Registrar is to defer the application pending the result of the proceedings. If the Registrar is aware that any person intends to commence such proceedings, he shall give notice to that person fixing a time within which he must commence those proceedings, failing which the Registrar may proceed with the application.

Clause 18 provides for the cancellation of the existing certificate of title, wholly or in part, on the issue of a certificate of title under this Part.

Clause 19 provides that the registered proprietor of any land or of any estate or interest in land who has been deprived of his title by the grant of title to an applicant under this Part will have no right of action against the Crown or the Registrar-General of Land, unless there has been fraud on the part of the applicant or some error, omission, or misfeasance of the Registrar or of any of his officers or clerks, and the registered proprietor is barred from bringing an action for possession or recovery of that land, estate, or interest.

Clause 20 prescribes the manner in which notices may be served for the purposes of this Part.

Clause 21 provides that an application for a title on the grounds of possession may not be made under this Part in the following cases:

- (a) In respect of any land owned by the Crown.
- (b) In respect of any Maori land.
- (c) In respect of any land the registered proprietor of which is a local authority.
- (d) In respect of land held in trust for any public purpose.
- (e) In respect of any land occupied by any person by virtue of the fact that a boundary fence, wall, hedge, building, ditch, or other artificial means of marking the boundary purporting to be on the common boundary of his land and the adjoining land is not erected on the proper boundary line.

- (f) In respect of any land occupied by any person by virtue of a change of course of any watercourse, or by virtue of the isolation of that land from other land in the same ownership by any watercourse or other natural feature or by any road.

Clause 22 of the Bill provides for consequential amendments of the principal Act. The sections amended by *paragraphs (a) to (c)* are those providing for the indefeasibility of the title of the registered proprietor. *Paragraph (d)* inserts in the Second Schedule to the principal Act a form of application for the purposes of this Part.

PART II

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT

Clause 23: By section 16 of the principal Act a Warrant by the Governor-General for the issue of a certificate of title is not necessary where the land has become vested in the person entitled by any Act or by any Proclamation or Order in Council under any Act since 1 March 1871.

By section 19 of the Reserves and Domains Act 1953 a public reserve may be vested in a local authority or other trustees by notice of the Minister of Lands, published in the *Gazette*. This clause will enable a certificate of title to be issued in such cases without the necessity of a warrant from the Governor-General.

Clause 24: Section 39 of the principal Act includes a provision that every memorial entered on the register must state the names of the parties to the instrument registered. The effect of this clause is that only the name of the person taking the benefit under the instrument registered need be included in the memorial.

Clause 25: Section 117 of the principal Act (as amended by section 4 of the Land Transfer Amendment Act 1959) provides that memorials of encumbrances are to be brought forward on any new lease, provided the Registrar is satisfied that the new lease is in renewal of or in substitution for a lease previously registered, and provided the new lease is registered within three years and a request is made by either the lessee or the encumbrancee to bring forward the encumbrances on the new lease.

This clause re-enacts that section in an amended form, the only change being the omission of the requirement that the new lease must be registered within three years after the expiry or surrender of the prior lease.

Clause 26: Section 118A of the principal Act (as inserted by section 2 of the Land Transfer Amendment Act 1960) provides that where the registered lessee of any land acquires the fee simple of the land pursuant to a right or obligation to purchase contained in his lease, the Registrar must bring forward on to the fee simple title all encumbrances registered against the lease if the lessee acquiring the fee simple requires him to do so. The effect of this amendment will be that this provision is to apply in every case where the lessee acquires the fee simple of the land in his lease, whether or not he acquires it pursuant to a right or obligation to purchase contained in the lease.

Clause 27 includes a Pro-consul in the definition of the term "Commonwealth representative" for the purposes of section 166 of the principal Act, which relates to the verification of instruments executed out of New Zealand.

Hon. Mr Hanan

LAND TRANSFER AMENDMENT

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A BILL INTITULED

An Act to amend the Land Transfer Act 1952

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

No. 77—1

1. Short Title—This Act may be cited as the Land Transfer Amendment Act 1963, and shall be read together with and deemed part of the Land Transfer Act 1952* (hereinafter referred to as the principal Act).

PART I

5

PRESCRIPTIVE TITLE TO LAND

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

“Application” means an application for a certificate of title made under section 3 of this Act; and “applicant” has a corresponding meaning: 10

“Local authority” means a local authority within the meaning of the Local Authorities Loans Act 1956, whether by virtue of section 2 of that Act or of any Order in Council under that section. 15

3. Application for certificate of title based on possession—(1) Where—

(a) Any person has been in possession of any land which is subject to the principal Act, being land for which a certificate of title has been issued or a Crown grant has been registered under that Act, for a continuous period of not less than twenty years, and continues in possession of the land; and 20

(b) That possession was such that he would have been entitled to apply for a title to the land on the ground of possession if the land had not been subject to the principal Act,— 25

he may, in accordance with the provisions of this Part of this Act, apply to the Registrar in Form U in the Second Schedule to the principal Act for the issue to him of a certificate of title for an estate in fee simple in the land. 30

(2) For the purposes of this Part of this Act, possession of any land by any person through or under whom the applicant claims shall be deemed to be possession by the applicant. 35

*1957 Reprint, Vol. 7, p. 615

Amendments: 1958, No. 75; 1959, No. 29; 1960, No. 69; 1961, No. 9

4. Person with registered interest under disability—

(1) Where the registered proprietor of, or any person shown by the register to be entitled to the benefit of, any estate or interest in any land is under any disability at the expiration
5 of the period of twenty years after the date on which the possession of the land by any other person commenced, the last-mentioned person, or any person claiming through or under him, shall not be entitled to make an application in respect of that land or any part thereof until that registered
10 proprietor or person shown by the register to be entitled as aforesaid has ceased to be under a disability or has died, whichever event first occurs:

Provided that nothing in this subsection shall apply in any case where at the date of any application under this Part of
15 this Act the applicant has been in possession of the land for a period of not less than thirty years.

(2) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of
unsound mind.

20 (3) For the purposes of subsection (2) of this section, but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is an inmate (otherwise than as a voluntary inpatient) in an institution within the meaning of the Mental Health Act
25 1911.

5. Examination of application by Registrar and Examiner of Titles—

(1) Upon receipt of any application, the Registrar shall cause the application to be examined and reported upon by the Examiner of Titles, and shall thereafter take into
30 account the report of the Examiner, and shall confer with the Examiner on the application.

(2) The Registrar and the Examiner may, if they think fit, dispense with any of the information required to be supplied in the prescribed form of application, if they are
35 satisfied that that information cannot reasonably be ascertained and supplied by the applicant.

(3) The Registrar may by notice to the applicant require the applicant to furnish him with any additional information or documents relating to his application within a reasonable
40 time specified in the notice.

6. Registrar to refuse application if evidence insufficient—(1) Where—

- (a) The Registrar and the Examiner are not satisfied on the evidence produced with any application or supplied pursuant to a requisition under subsection (2) of section 5 of this Act that the applicant has been in possession of the land in the manner and for the period specified in section 3 of this Act or where they are satisfied on that evidence that the applicant has been in possession of only part of the land; or
- (b) The applicant fails to comply with any requisition of the Registrar under subsection (2) of section 5 of this Act within the time specified in the notice given to the applicant under that subsection, or within such extended time as the Registrar, in his discretion, may allow,—

the Registrar shall refuse the application, either wholly or, as the case may be, as to the part thereof in respect of which he and the Examiner are not satisfied as aforesaid.

(2) Where an application has been refused under this section, either wholly or in part, the applicant, or any person claiming through or under him, may—

- (a) Make a new application in respect of the land or any part thereof, if it is supported by evidence that was not available at the time of the lodging of the first-mentioned application, or if the reason for the refusal of the first-mentioned application has ceased to exist; or
- (b) In any case where the application has been refused by reason of the failure of the applicant to comply with a requisition of the Registrar, make a new application with respect to the land or any part thereof, if the new application is accompanied by the information or documents specified in the requisition or some other evidence acceptable to the Registrar and the Examiner; or
- (c) In any case where the application has been refused on the ground that the applicant has been in possession of the land for a period less than that specified in section 3 of this Act, make a new application with respect to the land or any part thereof on the

ground that, by reason of a further period of possession since the refusal of the application, the applicant under the new application has been in possession of the land in the manner and for the period specified in section 3 of this Act;—
5 but shall not be entitled to make a new application on any other ground.

7. Notice of application—(1) Where the Registrar and the Examiner are satisfied that the applicant has been in
10 possession of the land or of any part thereof in the manner and for the period prescribed in section 3 of this Act, the Registrar shall cause notice of the application in such form as he thinks fit—

15 (a) To be published at least twice on dates specified or approved by the Registrar in such one or more newspapers as he thinks fit, including at least one newspaper circulating in the locality in which the land is situated; and

20 (b) To be given to any person who is shown by the register to have or who in the Registrar's opinion has or may have any estate or interest or any claim to any estate or interest in the land or any part thereof, and the notice shall advise that person that any such estate or interest will lapse in respect of
25 any land in the application for which a certificate of title may be issued under this Part of this Act unless a caveat is lodged as hereinafter provided; and

30 (c) To be published in such other way (if any) or to be given to such other persons (if any) as he thinks expedient in the circumstances.

(2) Where an application has been refused as to part of the land to which it relates, the notice required by this section shall be given only in respect of the remaining part of the
35 land.

(3) The notice shall fix a date, being not less than one month nor more than twelve months from the date of the first publication of the notice under paragraph (a) of subsection (1) of this section, after which the Registrar may, unless on
40 or before that date a caveat has been lodged as hereinafter provided against the land concerned, proceed with the application.

(4) The Registrar may, at any time before the granting of the application, extend for such period as he thinks fit the time fixed by any notice given pursuant to this section.

(5) For every notice given to any person pursuant to this section the Registrar may charge the same fee as is prescribed for a notice relating to any caveat. 5

8. Person claiming interest in land may lodge caveat—

(1) Any person claiming any estate or interest, whether legal or equitable or beneficial, in the land or any part of the land to which any application relates may, before the expiration of the time fixed or extended pursuant to section 7 of this Act, lodge a caveat in Form M in the Second Schedule to the principal Act suitably altered to refer to and forbid the granting of the application in respect of that land or part thereof, as the case may be. 10 15

(2) Nothing in section 143 or section 144 of the principal Act shall apply to any caveat lodged pursuant to subsection (1) of this section, but, except to the extent that they are inconsistent with the provisions of sections 9 to 12 of this Act, sections 138, 139, 142, 146, and 148 of the principal Act shall, with any necessary modifications, apply to such a caveat. 20

(3) Any caveat under this section may be withdrawn by the caveator or by his attorney or agent under a written authority, and either as to the whole or any part of the land to which it relates. 25

9. Caveat by registered proprietor of fee simple or estate for life, etc.—(1) Where the Registrar is satisfied that the person executing a caveat lodged pursuant to section 8 of this Act is the registered proprietor of an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation that has not lapsed in the land to which the application relates or in any part of that land, the Registrar shall refuse the application in respect of the land to which the caveat relates. 30

(2) Where a caveat lodged pursuant to section 8 of this Act is executed by any person purporting to be the agent of the caveator thereunder, and the caveator is the registered proprietor of any of the estates referred to in subsection (1) of this section, then, unless the Registrar is satisfied by evidence produced to him at the time of the lodging of the caveat that the person executing it has been duly authorised to do so, the Registrar shall give notice to him requiring him 35 40

to satisfy the Registrar, before a date fixed in the notice, by confirmation of the registered proprietor or otherwise, that he has been duly authorised as aforesaid.

5 (3) If the Registrar is not so satisfied within the time fixed in the notice given under subsection (2) of this section, or within such extended time as the Registrar, in his discretion, may allow, the caveat shall be deemed to have lapsed at the expiration of that time or extended time, and the Registrar shall mark it as having lapsed under this subsection.

10 (4) Where the Registrar is satisfied that the person executing any caveat to which subsection (2) of this section applies has been duly authorised to do so, he shall refuse the application in respect of the land to which the caveat relates.

10. Caveat by person claiming as beneficial or equitable owner of fee simple or estate for life, etc.—(1) Where—

15 (a) The caveator under a caveat lodged pursuant to section 8 of this Act claims to be the beneficial or equitable owner of an estate in fee simple or an estate for life or in remainder, contingent or otherwise, or an estate by way of executory limitation that has not lapsed in the land to which the application relates or in any part of that land; and

20 (b) The application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part of this Act,—

25 the Registrar shall, unless he is of the opinion that the estate or interest claimed is sufficiently evidenced by the register, give notice to the caveator requiring him, within a time fixed in the notice, being not less than three months after the giving of the notice, to either—

30 (c) Establish that claim in law and cause himself to be registered as the proprietor of the estate or interest claimed; or

35 (d) Satisfy the Registrar that the claim to that estate or interest is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.

(2) If, within the time fixed by any notice given under subsection (1) of this section, or within such extended time as the Registrar, in his discretion, may allow, the caveator neither causes himself to be registered as the proprietor of the estate or interest claimed nor satisfies the Registrar as aforesaid, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under this subsection.

(3) If—

- (a) The Registrar is of the opinion that the estate or interest claimed is sufficiently evidenced by the register; or
- (b) Within the time fixed or extended as aforesaid, the caveator causes himself to be registered as the proprietor of the estate or interest claimed in the land or in part thereof, or satisfies the Registrar as aforesaid,—

the Registrar shall refuse the application in respect of the land or of that part, as the case may be.

11. Caveat by person entitled to other estate or interest—

(1) Where the Registrar is satisfied that the caveator under a caveat lodged pursuant to section 8 of this Act is the registered proprietor of, or a person shown by the register to be entitled to the benefit of, any estate or interest in the land to which the application relates or in any part thereof (not being an estate in fee simple nor an estate for life or in remainder, contingent or otherwise, nor an estate by way of executory limitation), and the application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part of this Act,—

- (a) The Registrar shall notify the applicant that he will proceed with the application if the applicant agrees in writing to accept a certificate of title subject, to the same extent as the existing title, to that estate or interest and to every estate or interest (not being any estate in fee simple or other estate excepted as aforesaid) through or under which the caveator derives his title; and
- (b) The Registrar shall take no further action in respect of the application until the applicant so agrees or until the estate or interest of the caveator is discharged, surrendered, or otherwise extinguished; and
- (c) If the applicant so agrees, the caveat shall be deemed to have lapsed and the Registrar shall mark it as having lapsed under this subsection; and any certificate of title issued to the applicant shall be made subject to every such estate or interest as aforesaid.

(2) Where any land in respect of which an application has been lodged is subject to a registered mortgage, the applicant shall be deemed to be the registered proprietor of the land for the purposes of section 112 of the principal Act and to be the owner of the land and the mortgagor for the purposes of section 92 of the Property Law Act 1952.

(3) Where under this section the applicant agrees to take title subject to any mortgage and a certificate of title is issued to him under section 15 of this Act subject to that mortgage, the provisions of section 96 of the principal Act and of section 5 104 of the Property Law Act 1952 shall not, in relation to that mortgage, apply with respect to any transfer of the land, whether by the applicant or by any person deriving title through or under him.

10 **12. Caveat by person claiming beneficial or equitable estate less than fee simple—**(1) Where—

(a) The caveator under a caveat lodged pursuant to section 8 of this Act claims to be the beneficial or equitable owner of any estate or interest in the land to which the application relates or in any part of that land, not being an estate in fee simple nor an estate for life or in remainder, contingent or otherwise, nor an estate by way of executory limitation; and

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20 (b) The application has not been refused as to the whole of the land or as to that part pursuant to any other provision of this Part of this Act,—

the Registrar shall, unless he is of the opinion that the estate or interest claimed is sufficiently evidenced by the register, give notice to the caveator requiring him, within a time fixed in the notice, being not less than three months after the giving of the notice, to either—

25 (c) Establish that claim in law and cause himself to be registered as the proprietor of the estate or interest claimed; or

30 (d) Satisfy the Registrar that the claim to that estate or interest is valid but is of such a nature that it is not capable of being converted into a registered estate or interest.

(2) If, within the time fixed by any notice given under subsection (1) of this section, or within such extended time as the Registrar, in his discretion, may allow, the caveator neither causes himself to be registered as the proprietor of the estate or interest claimed nor satisfies the Registrar as aforesaid, the caveat shall be deemed to have lapsed, and the Registrar shall mark it as having lapsed under this subsection.

(3) If, within the time fixed or extended as aforesaid, the caveator causes himself to be registered as the proprietor of the estate or interest claimed, the provisions of section 11 of this Act, as far as they are applicable and with any necessary modifications, shall apply as if the caveator had been the registered proprietor of that estate or interest at the date of the lodging of the caveat. 5

(4) If—

(a) The Registrar is of the opinion that the estate or interest claimed is sufficiently evidenced by the register; or 10

(b) Within the time fixed by any notice given under subsection (1) of this section, or within such extended time as the Registrar, in his discretion, may allow, the caveator satisfies the Registrar as aforesaid,— 15
the provisions of section 11 of this Act, as far as they are applicable and with any necessary modifications, shall apply as if the registered proprietor of, or, as the case may be, the person shown by the register to be entitled to the benefit of, the estate or interest claimed were the caveator. 20

13. Notice of refusal of application to be given to applicant—Where pursuant to any provision of this Part of this Act the Registrar refuses any application as to the whole or any part of the land to which it relates, the Registrar shall give notice of the refusal to the applicant, unless notice has previously been given to the applicant of the refusal of the application as to the land or as to that part, as the case may be, under any other provision of this Part of this Act. 25

14. Definition of land for which certificate of title may be issued—(1) In this section— 30

“Title boundary”, in relation to any land, means the boundaries of the land as shown on the certificate of title or Crown grant relative to that land, or on the latest plan of survey approved by the Chief Surveyor of the land district in which the land is situated and held in his office or in the office of the Registrar, as the case may be: 35

“Occupation boundary”, in relation to any land, means any fence, wall, hedge, building, ditch or other artificial means or any natural feature of the land by which the land actually occupied by the applicant is limited or defined. 40

(2) Where the Registrar is satisfied that all notices required by this Part of this Act to be advertised or given have been advertised or given and that all times required by this Part of this Act to expire have expired, and that—

- 5 (a) No caveat has been lodged pursuant to section 8 of this Act against the granting of the application; or
- (b) Every caveat so lodged has lapsed or been withdrawn as to all the land to which the application relates or as to any part of that land; or
- 10 (c) All caveats so lodged that have neither lapsed nor been withdrawn as aforesaid affect part only of the land to which the application relates,—
- the Registrar shall give notice to the applicant requiring him to either—
- 15 (d) Supply a certificate by a registered surveyor that the occupation boundaries, or such of the occupation boundaries as exist, of the land remaining subject to the application, or, as the case may be, of such part of that land as is not affected by or has ceased
- 20 to be affected by any caveat lodged as aforesaid, coincide with the title boundaries of the land or of that part, as the case may be; or
- (e) Deposit under subsections (1) and (5) of section 167 of the principal Act a plan of survey of so much of that land or of the part thereof as aforesaid as is contained within the boundaries specified in sub-
- 25 section (3) of this section.

(3) The boundaries on any such plan of survey shall be drawn as follows:

- 30 (a) Where the title boundary of the land or any part of that title boundary is the common boundary between that land or any part thereof and land owned by the Crown or by any local authority or held for any public purpose, the plan shall to that extent be
- 35 drawn in terms of that title boundary or of that part thereof:
- (b) Where the occupation boundary of the land or any part of that occupation boundary is outside the title boundary of that land or any part thereof,
- 40 the plan shall to that extent be drawn in terms of the title boundary or of that part thereof:
- (c) Where the occupation boundary of the land or any part of that occupation boundary, while purporting to be on the title boundary of the land, is on the
- 45 inside of that title boundary or the corresponding

part thereof, and the land adjoining that title boundary or part thereof on the other side is not owned by the Crown or a local authority and is not held for a public purpose, the plan shall to that extent be drawn in terms of the occupation boundary: 5

(d) Where the occupation boundary of the land or any part of that occupation boundary does not purport to be on any title boundary of the land or any part thereof, the plan shall to that extent be drawn in terms of the occupation boundary: 10

(e) In any case to which the foregoing provisions of this subsection do not apply, and to the extent to which they do not apply, the plan shall be drawn in terms of the title boundaries of the land or in terms of any new survey boundaries necessary for the definition 15 of the land or to complete that definition, as the case may require.

(4) For the purpose of approving any plan required to be deposited pursuant to this section, the applicant shall be deemed to be the owner of the land. 20

15. Issue of certificate of title to applicant—(1) Where—

(a) The applicant has supplied the Registrar with the certificate or deposited the plan required by section 14 of this Act; and

(b) The Registrar and the Examiner are satisfied that the applicant would, if the land had not been subject to the principal Act, have been entitled on the grounds of possession to the issue to him of a certificate of title under that Act on application made under section 19 thereof; and 30

(c) If no sufficient reason to the contrary otherwise appears;—

then, notwithstanding anything in any other Act, the Registrar shall issue to the applicant a certificate of title in form 2 in the First Schedule to the principal Act for an estate in fee simple in the land remaining subject to the application or, as the case may be, the land in the plan, freed of all registered encumbrances, liens, and interests previously affecting the land, except those to which the title is to be subject pursuant to an agreement by the applicant under subsection (1) of section 11 of this Act. 35 40

(2) Where any land in respect of which the application was lodged is comprised in a certificate of title that is limited as to parcels, any certificate of title issued under this section may, if the Registrar thinks fit, be similarly limited as to 45 parcels.

16. Title to intervening land where fence, etc., not on boundary—(1) In this section the terms “title boundary” and “occupation boundary” have the same meanings as in section 14 of this Act.

5 (2) Where—

- (a) A plan of survey prepared by a registered surveyor and deposited pursuant to section 14 of this Act discloses that any occupation boundary is within the title boundary and the plan is made in accordance with the occupation boundary; and
- 10 (b) For that reason the certificate of title issued to the applicant under that section does not include the land between the occupation boundary and the title boundary (in this section referred to as the intervening land); and
- 15 (c) The Registrar is satisfied, from the particulars shown on the plan of survey, or otherwise that—
- (i) The fence, wall, hedge, building, ditch, or other artificial means of marking the occupation boundary was intended to coincide with or to represent the title boundary; or
- 20 (ii) Where the occupation boundary is a natural feature of the land, that feature is in close proximity to the title boundary; and
- 25 (d) The Registrar is satisfied that the intervening land or any part thereof is occupied together with other land adjoining the title boundary by the registered proprietor of the fee simple estate in that other land or by some person authorised by him,—
- 30 the Registrar may notify the registered proprietor of that other land that he may apply to have the intervening land, or, as the case may be, so much thereof as is occupied by him or by any person authorised by him as aforesaid amalgamated with that other land; and, notwithstanding anything in any
- 35 other Act, if that registered proprietor so applies, the Registrar may issue to him a certificate of title accordingly (in this section referred to as the amalgamated certificate of title), without fee or on payment of the prescribed fee as the Registrar thinks fit.
- 40 (3) Any intervening land that is amalgamated with other land pursuant to subsection (2) of this section shall cease to be subject to any registered encumbrances, liens, interests, and burdens previously affecting that intervening land, 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 land with which it has been amalgamated. 5

(4) Where the Registrar issues an amalgamated certificate of title under this section, any disposition of, or any application for a separate certificate of title for, any part of the land in that certificate of title shall be deemed to be a subdivision of the land for the purposes of the Municipal Corporations Act 1954 or of Part II of the Counties Amendment Act 1961, as the case may require. The Registrar shall make an entry on every such amalgamated certificate of title that it is subject to the provisions of this subsection. 10

17. Application in respect of land of dissolved company or other corporate body—Where any application relates to land the registered proprietor of the fee simple of which is a company or other corporate body that has been dissolved and the property of which has vested in the Crown as *bona vacantia*, and the Act pursuant to which the property is so vested authorises the Crown to disclaim the land,— 15

(a) The Registrar shall not proceed with the application until the land has been disclaimed by the Crown in manner provided in that Act and the applicant has satisfied the Registrar that no proceedings have been commenced in any Court by any person under that Act to become the registered proprietor of the land; and 25

(b) Where the Registrar is aware that any person intends to commence such proceedings, he shall serve notice on that person that an application has been lodged under this Part of this Act and that he will proceed with the application unless the proceedings are commenced within a time specified in the notice and are duly proceeded with; and 30

(c) Where any such proceedings have been commenced, the Registrar shall not proceed further with the application unless and until the proceedings have failed or been discontinued; and 35

(d) If such proceedings have not been commenced within the time fixed in the notice given under paragraph (b) of this section, or within such further time as the Registrar, in his discretion, may allow, and duly proceeded with, the Registrar shall proceed with the application. 40 45

18. Cancellation of certificate of title—(1) Where the Registrar issues a certificate of title to any applicant under the provisions of section 15 of this Act, he shall cancel any other certificate of title for that land or, as the case may be, shall
5 partially cancel any other certificate of title so far as it relates to that land. The memorial of cancellation shall state that the cancellation was made under the authority of this section.

(2) Upon the cancellation of any certificate of title as aforesaid, the estate or interest evidenced thereby and the
10 estate or interest evidenced by any instrument, entry, or memorial shown thereon which has not been required to be brought forward on to the new certificate of title pursuant to subsection (1) of section 11 of this Act shall cease and determine in respect of the land as to which the certificate has been
15 so cancelled.

19. No action against the Crown or Registrar-General of Land except in certain cases—Notwithstanding anything in section 172 of the principal Act, no action shall lie against the Crown or the Registrar-General of Land by the registered
20 proprietor of any land or of any estate or interest in any land by reason of the cancellation, in whole or in part, of any certificate of title to that land or any part thereof and the issue of a new certificate of title therefor under this Part of this Act, except where the registered proprietor—

- 25 (a) Is deprived of that land, estate, or interest or any part thereof by fraud on the part of any applicant or by the error, omission, or misfeasance of the Registrar or of any of his officers or clerks in dealing with any application; and
30 (b) Is by the principal Act barred from bringing an action for possession or other action for recovery of the land, estate, or interest.

20. Service of notices—(1) Any notice required by this Part of this Act to be given to or served on any person may
35 be given or served by delivering it to him personally or by sending it to him by registered post addressed to him at his last known place of abode or business in New Zealand, or, in the case of a notice required to be given to any applicant or caveator, at the address for service shown in the application
40 or caveat or at any other address for service subsequently notified by him to the Registrar. A notice so posted shall be deemed to have been given or served at the time when the registered letter would in the ordinary course of post be delivered.

(2) Without limiting the provisions of subsection (1) of this section, where any notice is sent or served by registered post, the production of a receipt given to an officer of the Post Office, and purporting to be signed by the person to whom it is addressed or by his authorised agent, shall be sufficient proof of the service. 5

21. This Part not to apply in certain cases—No application shall be made under section 3 of this Act—

- (a) With respect to any land owned by the Crown, except as provided in section 17 of this Act: 10
- (b) With respect to any Maori land within the meaning of the Maori Affairs Act 1953:
- (c) With respect to any land the registered proprietor of the fee simple of which is a local authority:
- (d) With respect to any land held in trust for any public purpose, being a trust noted or deemed to be noted on the register pursuant to section 129 of the principal Act: 15
- (e) With respect to any land occupied together with any adjoining land by the owner of that adjoining land or by any other person by virtue of the fact that any fence, wall, hedge, building, ditch, or other artificial means of marking the boundary purporting to be on the common boundary between that land and the adjoining land is not on that common boundary: 20 25
- (f) With respect to any land occupied together with any adjoining land by the owner of that adjoining land or by any other person by virtue of a change of course of any river, creek, or stream, or by virtue of the isolation of that land from any other land in the same ownership by any river, creek, or stream or by any other natural feature of the land or of adjoining land or by any road. 30

22. Consequential amendments—The principal Act is hereby amended— 35

- (a) By inserting in section 62, after the words “to have priority”, the words “but subject to the provisions of Part I of the Land Transfer Amendment Act 1963”: 40
- (b) By inserting in section 64, before the words “After land has become”, the words “Subject to the provisions of Part I of the Land Transfer Amendment Act 1963”:

(c) By inserting in section 79, before the words “every such certificate”, the words “subject to the provisions of Part I of the Land Transfer Amendment Act 1963”:

5 (d) By adding to the Second Schedule (as amended by subsection (2) of section 3 of the Land Transfer Amendment Act 1959 and by paragraph (b) of subsection (1) of section 4 of the Land Transfer Amendment Act 1961) the form U set out in the Schedule to this Act.

10

PART II

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT

23. Warrant for certificate of title not required in certain cases—Section 16 of the principal Act is hereby amended by inserting, after the words “Order in Council”, the words “or
15 notice by any Minister of the Crown”.

24. Contents of memorial—(1) Section 39 of the principal Act is hereby amended by omitting the words “names of the parties thereto”, and substituting the words “name of the person taking the benefit under the instrument”.

20 (2) Every memorial entered in the register before the passing of this Act which would have been valid if this section had been in force when the memorial was entered is hereby declared to have been validly entered, and the instrument to which it relates is hereby declared to have been duly
25 registered.

25. Bringing down encumbrances on registration of new lease—(1) The principal Act is hereby further amended by repealing section 117, and substituting the following section:

30 “117. (1) Where upon the registration of a lease—

“(a) The Registrar is satisfied that—

“(i) It is in renewal of or in substitution for a lease previously registered; and

35 “(ii) The lessee is the person registered as the proprietor of the prior lease at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier, or the personal representative of that person; and

“(b) The lessee or the registered proprietor of any encumbrance or lien or interest to which the prior lease was subject at the time of its expiry or surrender or the personal representative of the registered proprietor so requests,—

40

the Registrar shall state in the memorial of the new lease that it is in renewal of the prior lease or in substitution for the prior lease, as the case may be.

“(2) In every such case the new lease shall be deemed to be subject to all encumbrances, liens, and interests to which the prior lease is subject at the time of the registration of the new lease or at the time of the expiry or surrender of the prior lease, whichever is the earlier. 5

“(3) For the purposes of the foregoing provisions of this section, all references in any Act or in any agreement, deed, instrument, notice, or other document whatsoever to the prior lease or to the estate of the lessee thereunder shall, unless inconsistent with the context or with the provisions of this section, be deemed to be references to the new lease or to the estate of the lessee thereunder, as the case may be. 10 15

“(4) Upon the registration of a new lease in any case to which subsection (1) of this section applies, the Registrar shall record on the new lease all encumbrances, liens, and interests to which it is deemed to be subject as aforesaid in the order of their registered priority. 20

“(5) The provisions of this section are in addition to and not in derogation of the provisions of section 114 of the Land Act 1948, section 36 of the State Advances Corporation Act 1936, and any other enactment.”

(2) Section 4 of the Land Transfer Amendment Act 1959 is hereby repealed. 25

26. Bringing down encumbrances when lessee acquires fee simple—Section 118A of the principal Act (as inserted by section 2 of the Land Transfer Amendment Act 1960) is hereby amended by omitting from subsection (1) the words “Where the registered lessee of any land acquires the fee simple estate in that land pursuant to a right or obligation to purchase contained in his lease (not being a lease under the Land Act 1948 or any former Land Act)”, and substituting the words “Where the registered lessee under a lease of any land (not being a lease under the Land Act 1948 or any former Land Act) acquires the fee simple estate in that land”. 30 35

27. Verification of instruments executed out of New Zealand—Section 166 of the principal Act is hereby amended by inserting in the definition of the term “Commonwealth representative” in subsection (3), after the words “Consular Officer”, the word “Pro-consul”. 40

SCHEDULE

Sections 3 (1), 22 (d)

"Form U

APPLICATION FOR CERTIFICATE OF TITLE TO LAND ON GROUND OF POSSESSION

I, A. B., of [*Here state address and occupation*] hereby apply pursuant to section 3 of the Land Transfer Amendment Act 1963 for the issue to me of a certificate of title under the Land Transfer Act 1952 for an estate in fee simple in all that parcel of land situate in [*Here state district, e.g. borough, town, etc.*] containing [*Here state area of the land*] more or less being [*Here describe the land*] and being the whole (part) of the land in certificate(s) of title [*Here state the reference number of the title or titles*] on the grounds that I have been in continuous possession of the land within the meaning of the said section 3 for a period of [*Here state full period of self and others whose occupation is claimed*] from [*Here state date of commencement*] to the time of the making of this application. In support of my application I append the following:

1. PARTICULARS OF POSSESSION—

(1) Period of personal possession: [*Here state period and dates*].

(2) Periods of prior possession claimed: [*Here state also the identity, and, where applicable, the relationship and date of death of the persons through or under whom the applicant claims, and the manner in which possession was acquired by the applicant and by the persons through or under whom he claims.*]

(3) Manner of occupation: [*Here state as fully as is known or can be ascertained the nature of the occupation of all persons concerned—e.g., whether it has been continuous or broken, exclusive or divided, undisputed or by whom disputed, etc.*]

(4) Is land fenced? [*Here state all information available regarding the fences—e.g., age, extent, by whom erected, etc.*]

(5) Have any payments by way of rent or otherwise been made or claimed? [*Here give full particulars as to amounts, dates of payment, names of payees or claimants, reason for payments, etc.*]

2. EVIDENCE TO SUPPORT CLAIMS OF POSSESSION—

[*Here state as fully as possible anything supporting the claim or, if the evidence takes the form of separate writings annexed hereto, enumerate them here—e.g., evidence of payment of rates, evidence of neighbours, documents by which possession has been acquired, receipts for purchase money, etc.*]

3. PURPOSES FOR WHICH LAND HAS BEEN USED—

[*Here cover the whole period if possible.*]

4. IMPROVEMENTS—

[*Here state what improvements are on the land and whether they were effected before or since the commencement of the period of adverse possession.*]

5. ACKNOWLEDGMENT—

[*Here applicant to state whether or not he or any of his predecessors in possession or their agents ever acknowledged the title of the registered proprietor of the land, and, if so, when and in what form.*]

SCHEDULE—*continued*

6. DISABILITY OF REGISTERED PROPRIETORS (Applicable only where period of possession is less than 30 years)—

[Here state any knowledge or evidence available to establish that the registered proprietor of every estate or interest in the land is not suffering under any disability of infancy or unsoundness of mind.]

7. ADDRESS FOR SERVICE OF NOTICES—

[Here give an address at which all notices and proceedings relating to the application may be served.]

Dated this day of 19.....

.....
Applicant

Witness to the signature of A. B. as applicant

Witness (J.P., Solicitor, Postmaster or other accept-

Occupation able Land Transfer witness)

Address

STATUTORY DECLARATION OF APPLICANT

I, A. B., solemnly and sincerely declare—

1. That I am the applicant in the foregoing application.
2. That to the best of my knowledge and belief all the statements made therein are true and complete.
3. That I am not in possession of any information not disclosed in my application which would be adverse to the granting thereof by the Registrar.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

A. B.

Declared at this day of 19..... Before me—

Justice of the Peace

[Or other person authorised to take a statutory declaration.]"