

Property Legislation Amendment Bill 2005

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the law relating to real property by amending the following Acts to achieve the aims described below:

(a) the *Real Property Act 1900* so as:

(i) to require the boundaries of land to be adequately defined before an ordinary folio of the Register kept under that Act (***the Register***) is created for the land instead of a qualified folio, and

(ii) to require the Registrar-General to have regard to a survey report and an identification survey before cancelling a caution on a qualified folio after receipt of an official title search under the *Conveyancing Act 1919*, and

(iii) to authorise the Registrar-General to record a note in a folio of the Register indicating that land has the benefit of a permit to enclose a road or watercourse, or a licence authorising the use or occupation of Crown land, granted under the *Crown Lands Act 1989*, or a permissive occupancy granted over Crown land, and

(iv) to allow the creation of easements, profits à prendre and restrictions on the use of land that will only affect land subject to the provisions of the *Real Property Act 1900* (otherwise than by the registration of an instrument under section 88B of the *Conveyancing Act 1919*) where the same person will be the proprietor of the parcels burdened and benefited by them,

(v) to provide for the registration in the Register of dealings affecting a common law lease that is recorded as an encumbrance in the Register,

(b) the *Conveyancing Act 1919* so as to remove a reference to a “general order” setting costs that is no longer provided for by that Act and omit an amendment to another Act that has already taken effect,

(c) the *Strata Schemes (Freehold Development) Act 1973* and *Strata Schemes (Leasehold Development) Act 1986* to make it clear that a by-law cannot be made under either of those Acts allowing the proprietors in a strata scheme to avoid any of their responsibilities under a strata management statement,

(d) the *Local Government Act 1993* to provide for the dedication and vesting in a council of land as a council public reserve, and the vesting in a council of land as a drainage reserve, on registration of a transfer or conveyance of the land to the council for that purpose (as may presently be effected by the registration of a plan of subdivision that identifies land as a “public reserve” or “drainage reserve”).

The Bill also makes some minor amendments to the *Real Property Act 1900* that are consequential on other amendments described above, repeals an archaic and redundant provision (section 99 of that Act) and makes other minor amendments by way of statute law revision.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Real Property Act 1900* set out in Schedule 1 and described above in the Overview.

Clause 4 is a formal provision that gives effect to the amendments to the

Conveyancing Act 1919 set out in Schedule 2 and described above in the Overview.

Clause 5 is a formal provision that gives effect to the amendments to the *Strata Schemes (Freehold Development) Act 1973* set out in Schedule 3 and described above in the Overview.

Clause 6 is a formal provision that gives effect to the amendments to the *Strata Schemes (Leasehold Development) Act 1986* set out in Schedule 4 and described above in the Overview.

Clause 7 is a formal provision that gives effect to the amendments to the *Local Government Act 1993* set out in Schedule 5 and described above in the Overview.