



New South Wales

Land Titles Legislation Amendment Bill 2001

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to clarify the law relating to variations of registered leases and the exercise of options to renew leases, and
- (b) to permit recognition of adverse possession of part only of a parcel of Torrens title land in certain circumstances, and
- (c) to make further provision with respect to the registration of documents that effect a change of name, and
- (d) to facilitate the registration of leases for forestry purposes.

The Bill makes other, minor amendments to the *Real Property Act 1900* mainly 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 giving effect to the amendments to the *Conveyancing Act 1919* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Real Property Act 1900* set out in Schedule 2.

Schedule 1 Amendment of Conveyancing Act 1919

Subdivisions to allow leases for forestry purposes

As a consequence of section 23F of the *Conveyancing Act 1919*, a dealing with part of a lot shown in a current plan is in general unregistrable unless the land the subject of the dealing is itself shown in a current plan. A number of exceptions to this principle are currently enacted, and a further exception is to be made in the case of leases for forestry purposes. **Schedule 1 [3]** inserts a new Division 3C into Part 2 of the Act, to enable plans of subdivision that are not current plans to be lodged for forestry lease purposes. The object is to facilitate registration of the lease by allowing the land to be divided without creating a permanent subdivision and without the need for a survey to be done to the standard usually required for registration. **Schedule 1 [1], [2] and [8]** make consequential amendments.

Protection of lessee's option

A lease that provides for its renewal, or for purchase of the land demised, at the option of the lessee may make provision for avoidance of the option if the lessee breaches certain specified conditions. Section 133E of the *Conveyancing Act 1919* affords the lessee the right to have a court decide whether a particular breach does or does not operate to preclude the option, but only (as the section now stands) in relation to a breach occurring before service by the lessee of a notice of exercise of the option. The lease may require that such a notice be served a considerable time before expiry of the term of the lease. **Schedule 1 [4]** repeals and replaces the section in order to extend the jurisdiction of the court to adjudicate with respect to breaches occurring after, as well as those occurring before, service of that notice. **Schedule 1 [5] and [6]** make consequential amendments to sections 133F and 133G.

A related transitional provision in **Schedule 1 [9]** gives effect to these amendments in relation to leases already in force, but only if notice of exercise of the option has not been given.

Registration of documents changing persons' names

At present a document evidencing a change of a person's name may be registered in the General Register of Deeds under section 184D of the *Conveyancing Act 1919*. A document of this nature may also be registered under the *Births, Deaths and Marriages Registration Act 1995*. For administrative convenience, and as a measure against the possibility of fraud, **Schedule 1 [7]** amends the section so as to allow registration under the former Act to be refused, unless sufficient cause is shown for such registration in the circumstances of a particular case.

Schedule 2 Amendment of Real Property Act 1900

Possessory title to parts of laneways

Section 45D of the *Real Property Act 1900* permits the Registrar-General to recognise ownership by adverse possession of Torrens title land. Such recognition, however, is in general only possible if the adverse possessor has occupied the whole of the land parcel.

In many older urban subdivisions, the subdivider made provision for access to the rear of properties. These access ways, or service lanes, once served a purpose but in modern times many have fallen into disrepair. Some adjoining property owners have occupied a part of the service lane that is adjacent to their properties, and in the case of Old System title, have obtained title to the occupied part by virtue of their occupation of it. **Schedule 2 [1]** and **[2]** amend section 45D to permit similar recognition of a possessory title where the laneway is Torrens title. Concurrence of the local council will be required for recognition of the title. The amendment extends to permit recognition of title to occupied "revenge" or "spite" strips as well. These are narrow (usually one foot wide) strips of land that were included in a subdivision, typically to prevent access to a public road to which the developer had not contributed. **Schedule 2 [3]** and **[4]** make consequential amendments.

Variation of leases

Section 55A of the *Real Property Act 1900* permits registration of a variation of the term, rent or any other provision of a registered lease. Because it is possible (by virtue of a holdover clause in the lease) for a lease to continue in force beyond the date indicated in it as being the expiry date, the view has been taken that parties to a lease have a right to have variations registered after that date. There is, however, a need to regularise the extent to which registration of such variations should be permitted, in order to avoid congestion of the Register by records relating to leases that are defunct. Accordingly, **Schedule 2 [5]** amends the section so as to provide that:

- (a) registration of a variation of lease (other than a variation extending the term) may be refused if application for registration of the variation is lodged after the expiry of the term of the lease, and
- (b) registration of a variation of lease that extends the term of the lease may be refused if application for registration of the variation is lodged more than a year after the expiry of the term.

A related transitional provision in **Schedule 2 [15]** provides for the application of the amendments to applications for registration that are made after the amendments take effect.

Minor amendments

Schedule 2 [6] amends sections 123, 124 and 126 of the Act to provide that a person who is not a legal practitioner and who desires to appear in court on behalf of the Registrar-General may do so only with the leave of the court.

Schedule 2 [7] amends section 129 of the Act to provide that the Torrens Assurance Fund is not liable to compensate a person suffering loss or damage arising from a plan lodged under Division 3C of Part 2 of the *Conveyancing Act 1919*. The amendment is consequential on the amendment contained in Schedule 1 [3].

Schedule 2 [8] and **[10]–[13]** amend sections 131 and 135 of the Act to promote consistency of language in the two sections and to make it clear that the restrictions imposed by section 135 of the Act on the manner in which claims against the Torrens Assurance Fund are settled apply to claims settled in or out of court.

Schedule 2 [9] amends section 131 of the Act to remove an ambiguity as to the time within which proceedings may be brought in accordance with section 132 of the Act.

Land Titles Legislation Amendment Bill 2001

Explanatory note

Schedule 2 [14] amends section 135M of the Act to update a reference to an administrative office.



New South Wales

Land Titles Legislation Amendment Bill 2001

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Conveyancing Act 1919 No 6	2
4 Amendment of Real Property Act 1900 No 25	2
Schedules	
1 Amendment of Conveyancing Act 1919	3
2 Amendment of Real Property Act 1900	8



New South Wales

Land Titles Legislation Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Conveyancing Act 1919* and the *Real Property Act 1900* with respect to registered leases, title to land by adverse possession and the registration of certain instruments, and by way of statute law revision.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Land Titles Legislation Amendment Act 2001</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Conveyancing Act 1919 No 6	7
The <i>Conveyancing Act 1919</i> is amended as set out in Schedule 1.	8
4 Amendment of Real Property Act 1900 No 25	9
The <i>Real Property Act 1900</i> is amended as set out in Schedule 2.	10

Schedule 1	Amendment of Conveyancing Act 1919	1
	(Section 3)	2
[1]	Section 7A Current plan	3
	Omit “section 23H” from section 7A (3) (b).	4
	Insert instead “Division 3B or 3C of Part 2”.	5
[2]	Part 2, Division 3B, heading	6
	Omit the heading. Insert instead:	7
	Division 3B	8
	Subdivisions to allow leases for caravan parks or mobile home estate purposes	9
[3]	Part 2, Division 3C	10
	Insert after Division 3B:	11
	Division 3C	12
	Subdivisions to allow leases for forestry purposes	13
23J	Definition	14
	In this Division, <i>plan of subdivision for lease purposes</i> means	15
	a plan of subdivision (within the meaning of section 195) that	16
	is marked, in accordance with the regulations, to indicate that	17
	development consent to the subdivision has been granted under	18
	the <i>Environmental Planning and Assessment Act 1979</i> subject	19
	to the condition that the subdivision is a subdivision for	20
	forestry lease purposes.	21
23K	Transactions	22
	(1) The Registrar-General may refuse to register a transaction with	23
	respect to a lot in a plan of subdivision for lease purposes	24
	unless it comprises:	25
	(a) the lease of the whole of the lot for a period that,	26
	including the period of any option to renew, does not	27
	exceed 40 years, or	28

(b)	the transfer, conveyance, sublease, variation or mortgage of a leasehold interest so created.	1 2
(2)	This section does not apply to an agreement with respect to land the subject of a proposed plan of subdivision for lease purposes, but the agreement is taken to be conditional on the registration of the proposed plan.	3 4 5 6
[4]	Section 133E	7
	Omit the section. Insert instead:	8
133E	Breach of certain obligations not to preclude option except in certain circumstances	9 10
(1)	This section applies to a lease that contains:	11
(a)	an option exercisable by the lessee, and	12
(b)	provision by which the lessee's entitlement to the option is made to depend on performance by the lessee of any specified obligation, whether such performance is required before, or after, or before and after, the giving of any notice by which the option is exercised.	13 14 15 16 17
(2)	Despite any provision of the kind referred to in subsection (1) (b), no breach by the lessee of any relevant obligation precludes the lessee's entitlement to the option unless:	18 19 20
(a)	the prescribed notice has been served on the lessee in respect of the breach, and	21 22
(b)	the lessee's rights are extinguished in relation to the notice.	23 24
(3)	In subsection (2):	25
	<i>breach</i> of an obligation includes, where the obligation requires any thing to be done, any neglect or failure to do the thing concerned.	26 27 28
	<i>obligation</i> includes any agreement, covenant, condition or stipulation by which the lessee is required to do or refrain from doing any thing.	29 30 31

<i>prescribed notice</i> means a notice in writing:	1
(a) specifying the lessee's breach of the relevant obligation and served on the lessee:	2
(i) within 14 days after the giving of a notice by which the option is exercised, if the breach occurred before the giving of that notice, or	3
(ii) within 14 days after the breach, if the breach occurred after the giving of that notice, and	4
(b) stating that, subject to any order of the court under section 133F, the lessor proposes to treat the breach as precluding the lessee from entitlement to the option.	5
(4) For the purposes of subsection (2) (b), the lessee's rights are extinguished in relation to a prescribed notice:	6
(a) if an order for relief against the effect of the breach in relation to the lessee's entitlement to the option is not sought from the court within one month after service of the prescribed notice, or	7
(b) if proceedings in which such relief is sought are disposed of, in so far as they relate to that relief, otherwise than by granting relief, or	8
(c) if such relief is granted on terms to be complied with by the lessee before compliance by the lessor with the order granting relief, and the lessee fails to comply with those terms within the time stipulated by the court for the purpose.	9
[5] Section 133F Court may grant relief from breach of certain obligations	10
Insert "referred to in section 133E (2)" after "notice" in section 133F (3) (c).	11
[6] Section 133G Lease to continue in force until issue decided	12
Omit section 133G (1). Insert instead:	13
(1) Except as otherwise provided by this section or by an order of the court, a lease that would otherwise expire during any of the following periods is continued in force by this subsection until the end of the period concerned:	14
(a) a period of 14 days referred to in paragraph (a) of the definition of <i>prescribed notice</i> in section 133E (3),	15

(b)	a period of one month referred to in section 133E (4) (a),	1 2
(c)	the period commencing with the commencement of proceedings referred to in section 133E (4) (b) and ending at the time when:	3 4 5
(i)	those proceedings are disposed of in the manner referred to in that paragraph, or	6 7
(ii)	effect is given to orders made by the court in granting relief referred to in that paragraph, in so far as such orders affect the lessor or relate to an assurance by the lessee.	8 9 10 11
[7]	Section 184D Registration of instruments	12
	Insert after section 184D (7):	13
(8)	The Registrar-General may refuse to register in the General Register of Deeds an instrument that relates only to a change of name of any person, unless the applicant for registration satisfies the Registrar-General that good cause exists why the instrument should be so registered rather than dealt with under the <i>Births, Deaths and Marriages Registration Act 1995</i> .	14 15 16 17 18 19
[8]	Section 195 Definitions	20
	Omit “section 23H” from the definition of <i>plan of subdivision</i> in section 195 (1).	21 22
	Insert instead “Division 3B or 3C of Part 2”.	23
[9]	Schedule 9 Savings, transitional and other provisions	24
	Insert after Part 4:	25
	Part 5 Provisions consequent on enactment of Land Titles Legislation Amendment Act 2001	26 27
10	Definition	28
	In this Part, <i>amending Act</i> means the <i>Land Titles Legislation Amendment Act 2001</i> .	29 30

11 Protection of lessee's option

The amendments made by the amending Act to sections 133E and 133G extend to an option:

- (a) contained in a lease entered into before the date on which those amendments took effect, and
- (b) notice of the exercise of which has not, before that date, been given.

1
2
3
4
5
6
7

Schedule 2 Amendment of Real Property Act 1900	1
(Section 4)	2
[1] Section 45D Application for title by possession	3
Insert after section 45D (2):	4
(2A) A person who:	5
(a) is in possession of part of a residue lot that could, if it	6
had been a whole parcel of land, have been the subject	7
of an application by the person under subsection (1),	8
and	9
(b) is (or is entitled to be) the registered proprietor of an	10
estate in fee simple in land that adjoins that lot,	11
may apply to the Registrar-General to be recorded in the	12
Register as the proprietor of an estate in fee simple in land	13
consisting of a consolidated lot comprising the part of the	14
residue lot in the person’s possession and the adjoining land.	15
(2B) In subsection (2A), <i>residue lot</i> means an allotment consisting	16
of a strip of land that the Registrar-General is satisfied:	17
(a) was intended for use as a service lane, or	18
(b) was created to prevent access to a road, or	19
(c) was created in a manner, or for a purpose, prescribed by	20
the regulations.	21
[2] Section 45D (5)	22
Insert “, and (in the case of an application under subsection (2A)) such	23
evidence of concurrence on the part of the local council,” after “title”.	24
[3] Section 45D (5)	25
Insert the following note at the end of the subsection:	26
Note. With an application made under subsection (2A), it is not necessary	27
to include a consolidated plan at first instance.	28

[4] Section 45E Grant of possessory application	1
Omit “section 45D (1) or (2)” from section 45E (1) (a).	2
Insert instead “section 45D (1), (2) or (2A)”.	3
[5] Section 55A Registration of variation of lease	4
Omit section 55A (5). Insert instead:	5
(5) The Registrar-General may decline to register a variation of lease if:	6
(a) the application for registration of the variation is lodged after the termination date of the lease, and	7
(b) the proposed variation does not provide for extension of the term of the lease.	8
(6) The Registrar-General may decline to register a variation of lease that purports to extend the term of the lease if the application for registration of the variation is lodged later than 12 months after the termination date of the lease.	9
(7) In this section, <i>termination date</i> , in relation to a lease, means the date of expiry of the term of the lease, as evidenced:	10
(a) by the lease, if no other date has for that purpose been fixed by a registered variation of lease, or	11
(b) by a registered variation of lease (and if more than one, the last to be registered) that fixes such a date.	12
[6] Sections 123 (2), 124 (2) and 126 (2)	13
Omit “or agent” wherever occurring.	14
[7] Section 129 Circumstances in which compensation payable	15
Insert at the end of section 129 (2) (h):	16
, or	17
(i) to the extent to which the loss or damage arises from an error contained in a plan lodged in accordance with Division 3C of Part 2 of the <i>Conveyancing Act 1919</i> .	18
	19
	20
	21
	22
	23
	24
	25
	26
	27
	28
	29

[8] Section 131 Administrative proceedings for recovery of compensation	1
Omit section 131 (4) and (5). Insert instead:	2
(4) The Registrar-General may determine a claim by making an offer of settlement or by refusing the claim.	3 4
(5) Section 135 applies to the settlement, and any offer of settlement, of a claim.	5 6
[9] Section 131 (10)	7
Omit the subsection. Insert instead:	8
(10) Subsection (9) does not prevent a claim from being determined under this section in favour of the claimant after the expiry of the relevant period limited by that subsection, if the claimant has not commenced proceedings under section 132.	9 10 11 12
[10] Section 135 Registrar-General may settle claims	13
Insert “, whether in the course of litigation to enforce the claim or otherwise” after “Fund” in section 135 (1).	14 15
[11] Section 135 (3) (a) (i)	16
Insert “or will” after “would”.	17
[12] Section 135 (3) (b)	18
Omit “the amount”. Insert instead “any amount”.	19
[13] Section 135 (4)–(6)	20
Omit the subsections. Insert instead:	21
(4) In settling such a claim, the Registrar-General:	22
(a) may pay such amount (which may include amounts by way of costs and interest) as the Registrar-General thinks reasonable, and	23 24 25
(b) may, instead of or in addition to payment of a settlement amount, take other action.	26 27
(5) A settlement amount may include any costs incurred by the claimant before the settlement.	28 29

(6) An officer or person employed in the office of the Registrar-General has no power to settle claims on the Registrar-General's behalf unless duly authorised to do so by a delegation in accordance with section 135M.	1 2 3 4
[14] Section 135M Delegation	5
Omit "Land Titles Office" from section 135M (1).	6
Insert instead "office of the Registrar-General".	7
[15] Schedule 3 Savings and transitional provisions	8
Insert after Part 5:	9
Part 6 Land Titles Legislation Amendment Act 2001	10
16 Definition	11
In this Part, <i>amending Act</i> means the <i>Land Titles Legislation Amendment Act 2001</i> .	12 13
17 Possessory title to part of residue lot	14
The provisions of Part 6A, as amended by the amending Act, apply in respect of possession of land before, as well as after, the date on which the amendments took effect.	15 16 17
18 Variation of leases	18
The amendments made by the amending Act to section 55A apply only in respect of applications for registration of a variation that are made under that section after the date on which the amendments took effect.	19 20 21 22