

Conveyancing Amendment (Law of Support) Bill 2000

Explanatory note

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

Overview of Bill

Generally under the common law, the owner or occupier of a parcel of land has a “natural right” not to have the support of that land removed by the owner or occupier of an adjoining (or neighbouring) parcel of land. This common law natural right of support is distinct from a right to support that is acquired by easement. If it is infringed and damage is caused to the supported land, an action lies in nuisance.

The object of this Bill is to reform this area of the law by providing that an infringement of the right of support for land will be actionable in negligence and not in nuisance. Accordingly, a common law duty of care is established. The duty of care, based on the common law of negligence, is not to do anything (or not to omit to do anything) on or in relation to land that removes or reduces the support provided by that land to other land. This reform of the law of support is achieved by an amendment to the *Conveyancing Act 1919*.

The duty of care in relation to support for land will not extend to an “omission” by the Crown (or by a local or public authority) in relation to supporting land.

The Bill gives effect to the recommendations made by the New South Wales Law Reform Commission in its report entitled *The Right to Support from Adjoining Land* (Report 84).

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 consequential amendment to the *Roads Act 1993* set out in Schedule 2.

Schedule 1 amends the *Conveyancing Act 1919* for the purposes described above.

Schedule 2 amends section 91 of the *Roads Act 1993* (Adjoining landowner to provide support for public road) to remove the reference in that section to the rule of law as to support and replace it with a reference to the duty of care established under the *Conveyancing Act 1919*.