



New South Wales

# 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*.



New South Wales

# Conveyancing Amendment (Law of Support) Bill 2000

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New South Wales

# Conveyancing Amendment (Law of Support) Bill 2000

No. , 2000

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## A Bill for

An Act to amend the *Conveyancing Act 1919* to reform the law relating to the right to support for land; to amend the *Roads Act 1993* consequentially; and for related purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Conveyancing Amendment (Law of Support) Act 2000</i> .	3
<b>2 Commencement</b>	4
This Act commences on a day or days to be appointed by proclamation.	5 6
<b>3 Amendment of Conveyancing Act 1919 No 6</b>	7
The <i>Conveyancing Act 1919</i> is amended as set out in Schedule 1.	8
<b>4 Consequential amendment of Roads Act 1993 No 33</b>	9
The <i>Roads Act 1993</i> is amended as set out in Schedule 2.	10

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## Schedule 1 Amendment of Conveyancing Act 1919

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(Section 3)

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### [1] Section 177

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Insert before section 178:

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#### 177 Duty of care in relation to support for land

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- (1) For the purposes of the common law of negligence, a duty of care exists in relation to the right of support for land. 6  
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- (2) Accordingly, a person has a duty of care not to do anything, or not to omit to do anything, on or in relation to land (the *supporting land*) that removes the support provided by the supporting land to any other land (the *supported land*). 8  
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- (3) For the purposes of this section, *supporting land* includes the natural surface of the land, the subsoil of the land, any water beneath the land, and any part of the land that has been reclaimed. 12  
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- (4) The duty of care in relation to support for land does not extend to any support that is provided by a building or structure on the supporting land except to the extent that the supporting building or structure concerned has replaced the support that the supporting land in its natural or reclaimed state formerly provided to the supported land. 16  
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- (5) The duty of care in relation to support for land may be excluded or modified by express agreement between a person on whom the duty lies and a person to whom the duty is owed. 22  
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- (6) Any such agreement: 25
  - (a) has effect in relation to any agent of the person on whom the duty lies, and 26  
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  - (b) has effect in relation to any successor in title of the supported land if the agreement is embodied in a registered easement for removal of support relating to that land. 28  
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- (7) The right to agree to the removal of the support provided by supporting land to supported land is a right of the kind that is capable of being created by an easement. 1  
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- (8) Any right at common law to bring an action in nuisance in respect of the removal of the support provided by supporting land to supported land is abolished by this section. 4  
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- (9) Any action in negligence that is commenced after the commencement of this section in relation to the removal of the support provided by supporting land to supported land may be wholly or partly based on something that was done before the commencement of this section. However, this subsection does not operate to extend any period of limitation under the *Limitation Act 1969*. 7  
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- (10) This section extends to land and dealings under the *Real Property Act 1900*. 14  
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- (11) This section does not apply in relation to any proceedings that were commenced before the commencement of this section. 16  
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- (12) A reference in this section to the removal of the support provided by supporting land to supported land includes a reference to any reduction of that support. 18  
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- (13) This section binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities. 21  
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- (14) However, the duty of care in relation to support for land does not extend to any omission (whether before or after the commencement of this section) by the Crown, or by a local or public authority constituted by or under an Act, in relation to supporting land. 24  
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- [2] Section 181A Construction of expressions used to create easements** 29
- Insert after section 181A (2): 30
- (2A) In an instrument that takes effect after the commencement of section 177 (as inserted by Schedule 1 [1] to the *Conveyancing Amendment (Law of Support) Act 2000*) and purporting to 31  
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create an easement for removal of support, the expression  
*easement for removal of support* has effect as if the words  
attributed in Part 15 of Schedule 8 to that expression were  
inserted instead.

**[3] Schedule 8 Construction of certain expressions**

Insert after Part 14:

**Part 15 Easement for removal of support**

- 1 The owner of supporting land may:
  - (a) remove the support provided by the supporting land to the supported land, and
  - (b) do anything reasonably necessary for that purpose.
- 2 An expression used in this easement that is defined for the purposes of section 177 of the *Conveyancing Act 1919* has the same meaning given to it in that section.



Conveyancing Amendment (Law of Support) Bill 2000

Schedule 2 Consequential amendment of Roads Act 1993

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<b>Schedule 2</b>	<b>Consequential amendment of Roads Act</b>	1
	<b>1993</b>	2
	(Section 4)	3
	<b>Section 91 Adjoining landowner to provide support for public road</b>	4
	Omit “rule of law as to support” from section 91 (1).	5
	Insert instead “duty of care in relation to support for land as referred to in	6
	section 177 of the <i>Conveyancing Act 1919</i> ”.	7