

Passed by both Houses



New South Wales

Conveyancing Amendment (Law of Support) Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Conveyancing Amendment (Law of Support) Bill 2000

Act No , 2000

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Conveyancing Amendment (Law of Support) Act 2000*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Conveyancing Act 1919 No 6

The *Conveyancing Act 1919* is amended as set out in Schedule 1.

4 Consequential amendment of Roads Act 1993 No 33

The *Roads Act 1993* is amended as set out in Schedule 2.

Schedule 1 Amendment of Conveyancing Act 1919

(Section 3)

[1] Section 177

Insert before section 178:

177 Duty of care in relation to support for land

- (1) For the purposes of the common law of negligence, a duty of care exists in relation to the right of support for land.
- (2) Accordingly, a person has a duty of care not 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*).
- (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.
- (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.
- (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.
- (6) Any such agreement:
 - (a) has effect in relation to any agent of the person on whom the duty lies, and
 - (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.

- (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.
- (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.
- (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*.
- (10) This section extends to land and dealings under the *Real Property Act 1900*.
- (11) This section does not apply in relation to any proceedings that were commenced before the commencement of this section.
- (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.
- (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.

[2] Section 181A Construction of expressions used to create easements

Insert after section 181A (2):

- (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 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.

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Schedule 2 Consequential amendment of Roads Act 1993

Schedule 2 Consequential amendment of Roads Act 1993

(Section 4)

Section 91 Adjoining landowner to provide support for public road

Omit “rule of law as to support” from section 91 (1).

Insert instead “duty of care in relation to support for land as referred to in section 177 of the *Conveyancing Act 1919*”.