



New South Wales

Access to Neighbouring Land Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to enable a person to gain access to another person's land to carry out work on the person's own land or to carry out work on a utility service situated on that other person's land. The person will be able to apply to a Local Court for a neighbouring land access order or a utility service access order. At present, unless consent is obtained from the owner of the land, or there is some other legal right to access, access cannot be gained for these purposes.

The orders are to be subject to statutory conditions, including an obligation to restore the land, so far as is practicable, and are to be of limited duration.

The Bill also provides for the liability of joint users of utility services for maintenance and repair of such services.

The Bill gives substantial effect to the recommendations made by the New South Wales Law Reform Commission in its report entitled *Right of Access to Neighbouring Land*.

Outline of provisions

Part 1 Preliminary

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 defines certain words and expressions used in the proposed Act.

Clause 4 provides that the proposed Act is to bind the Crown.

Clause 5 provides that the proposed Act does not enable a person to carry out any work or activity for which a consent or other authority is required under another Act or that is prohibited under another Act. A person may not apply for access under the proposed Act if access for the required purposes may be obtained or granted under another Act or is prohibited by or under another Act.

Clause 6 provides that the proposed Act does not apply to certain land under the *National Parks and Wildlife Act 1974*.

Part 2 Access orders

Division 1 Applications for access orders and making of orders

The proposed Division specifies the persons who may apply for the access orders and confers jurisdiction on the Local Court to make the orders.

Clause 7 enables a person who requires access to land adjoining or adjacent to the person's land in order to carry out work on the person's land to apply for a neighbouring land access order. The clause also enables a person who is not the owner of the land on which the work is to be carried out to apply for a neighbouring land access order with the consent of the person on whose behalf the work is to be carried out.

Clause 8 enables a person who requires access to land to carry out work on a utility service (for example, a sewerage service) which the person is entitled to use but which is situated on land that the person does not own to apply for a utility service access order. The order may be applied for even if there is an easement or other right of access to the land concerned.

Clause 9 provides that a person who requires both kinds of order may apply for both orders.

Clause 10 requires at least 21 days notice to be given of an application for an access order to the owner of the land to which access is sought, any other person entitled to use a utility service affected by the order sought and any other person the applicant believes will be affected by the order.

Clause 11 confers jurisdiction on the Local Court to grant a neighbouring land access order if it is satisfied that access is required for the specified purpose and that it is appropriate in the circumstances of the case. However, orders may not be made unless the Local Court is satisfied that a reasonable effort has been made to reach agreement by the relevant parties and that the required notice of the application has been given.

Clause 12 sets out purposes for which a neighbouring land access order may be made but does not limit those purposes.

Clause 13 confers jurisdiction on the Local Court to grant a utility service access order if it is satisfied that access to land is required for the purpose of carrying out work on or in connection with a utility service situated on the land and that it is appropriate in the circumstances of the case. However, orders may not be made unless the Local Court is satisfied that a reasonable effort has been made to reach agreement by the relevant parties and that the required notice of the application has been given.

Clause 14 sets out purposes for which a utility service access order may be made but does not limit those purposes.

Clause 15 provides that, before determining an application for an access order, the Local Court must consider the purpose and type of work proposed, whether the work cannot be carried out or would be substantially more difficult or expensive to carry out without the access and whether the access would cause unreasonable hardship to a person affected by the order.

Clause 16 enables the Local Court to impose conditions on an access order, including conditions relating to minimising inconvenience or loss of privacy, regulating access to buildings and parts of buildings and requiring the applicant to take out insurance and conditions varying or dispensing with any or all of the provisions of Division 2 of the proposed Part.

Clause 17 sets out matters to be included in access orders, such as the work to be carried out and the duration of the order.

Division 2 Effect of access orders

The proposed Division sets out the activities authorised by access orders and the obligations of persons who obtain orders as well as those of the owners and occupiers of land subject to the orders.

Clause 18 provides that a neighbouring land access order authorises, for the purpose of carrying out work on land, a person to have access to adjoining or adjacent land to that land, in accordance with the order.

Clause 19 provides that a utility service access order authorises a person to have access to land to carry out work on or in connection with a utility service on that land in accordance with the order.

Clause 20 provides that both kinds of access order authorise the applicant to move materials on and from land and remove waste from the land and also authorise such persons as are reasonably necessary to carry out the work to have access to the land.

Clause 21 requires the applicant to restore the land, as far as practicable, to the condition it was in before the access and to indemnify the owner against damage to the property arising from the access.

Clause 22 requires the owner to give access in accordance with the order.

Clause 23 provides that an access order does not bind anyone who was not a party to the proceedings for the order except a successor in title to an owner bound by an order.

Division 3 Other provisions relating to access orders

Clause 24 provides that an access order may be varied or revoked by a Local Court.

Clause 25 provides that an access order ceases to have effect on the date specified in the order or if earlier revoked by a Local Court.

Clause 26 confers jurisdiction on the Local Court to make an order for compensation for loss, damage or injury arising from an access order. An order may be made by the Local Court when an access order is made or at a later time (even if the order is no longer in force) but an action for a compensation order may not be brought more than 3 years after the last date access occurred under the order.

Clause 27 provides that the costs of an application are payable at the Local Court's discretion. In determining who is to pay costs, the Local Court may consider any attempts before the proceedings to reach agreement between the parties, whether a refusal to consent to access was unreasonable in the circumstances and any other matter it thinks fit.

Clause 28 makes it an offence carrying a penalty of up to 5 penalty units (currently \$550) to fail to comply with an access order and provides for an additional remedy of damages to be available on failure to comply with an order.

Part 3 Transfer of proceedings to other courts and appeals

Clause 29 provides for the transfer of proceedings for compensation under the proposed Act from the Local Court to the Land and Environment Court if the amount of any compensation or damages is likely to exceed the Local Court's civil jurisdiction and for the transfer of proceedings by the Land and Environment Court back to the Local Court. Transfer may be on the Court's own motion or on the application of a party to proceedings.

Clause 30 enables a Local Court to refer a question of law arising in proceedings for an access order to the Land and Environment Court.

Clause 31 gives a right of appeal in proceedings for an access order from a Local Court to the Land and Environment Court. The appeal must be made within 30 days after the decision appealed against and may be made only on a question of law.

Part 4 Miscellaneous provisions

Clause 32 makes owners who are jointly entitled to use a utility service jointly liable for any repair or maintenance of the service carried out by one of the owners, if the owner or a user is so liable and the liability does not arise from another user's fault. The proposed section is to be subject to any contract or arrangement between the owner and the provider of the utility service and to the provisions of any other Act.

Clause 33 enables the regulations to prescribe model forms of agreement for access to neighbouring land and access to utility services.

Clause 34 applies provisions of the proposed Act to certain native title holders and claimants.

Clause 35 prohibits contracting out of the proposed Act.

Clause 36 sets out the manner in which notices under the proposed Act are to be given, either personally or by post addressed to the last known place of residence

or business of the person. The proposed section also provides for the manner in which notices are to be given to native title holders.

Clause 37 provides that proceedings under the proposed Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Clause 38 confers on the Governor a general regulation-making power and enables regulations to be made for or with respect to the service of notices where the owner of land cannot be found. It also enables relevant Local Court rules to be made with respect to practice and procedure.

Clause 39 is a formal provision giving effect to the consequential amendments to the *Land and Environment Court Act 1979* set out in Schedule 1. The amendments confer jurisdiction on the Land and Environment Court in relation to transferred proceedings and appeals.

Clause 40 provides for the Ministerial review of the proposed Act.

Schedule 1 contains amendments to the *Land and Environment Court Act 1979*.



New South Wales

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New South Wales

Access to Neighbouring Land Bill 2000

No. , 2000

A Bill for

An Act to enable courts to make orders permitting access to land by persons not otherwise entitled to that access for the purpose of carrying out work on their own land or carrying out work on utility services on that land, and to provide for the payment of repair and maintenance costs relating to utility services by joint users of services; and for other purposes.

Clause 1 Access to Neighbouring Land Bill 2000

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Access to Neighbouring Land Act 2000*. 4

2 Commencement 5

This Act commences on a day or days to be appointed by proclamation. 6
7

3 Definitions 8

In this Act: 9

access order means a neighbouring land access order or a utility service access order. 10
11

function includes a power, authority or duty. 12

land includes a stratum of air above or a stratum of soil below the surface of the earth. 13
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neighbouring land access order means an order made under this Act authorising access to adjoining or adjacent land. 15
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owner includes a joint owner or an occupier. 17

utility service means a sewerage, drainage, water, gas, electricity or telephone service or other service prescribed by the regulations for the purpose of this definition. 18
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utility service access order means an order made under this Act authorising access to land to carry out work on or in connection with a utility service. 21
22
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4 Act binds Crown 24

This Act binds the Crown in right of New South Wales and also, in so far as the legislative power of Parliament permits, the Crown in all its other capacities. 25
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27

5 Act does not authorise work, activity or access if regulated or prohibited by or under other Act	1
	2
(1) Nothing in this Act:	3
(a) enables a person to carry out any work or engage in any activity for which a consent or other authority must be obtained or granted under any other Act without the required consent or authority, or	4
	5
	6
	7
(b) enables a person to carry out any work or engage in any activity that is prohibited by or under any other Act.	8
	9
(2) A person may not apply for an access order under this Act if access to the land concerned, for the purposes for which access is required, may be obtained or granted under another Act or is prohibited by or under another Act.	10
	11
	12
	13
6 Act does not apply to land under National Parks and Wildlife Act 1974	14
This Act does not apply to or in respect of the following land under the <i>National Parks and Wildlife Act 1974</i> :	15
	16
(a) land reserved as a national park, historic site, state recreation area or regional park,	17
	18
(b) land dedicated as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area,	19
	20
(c) land declared under that Act to be an Aboriginal place.	21

Clause 7	Access to Neighbouring Land Bill 2000	
Part 2	Access orders	
Division 1	Applications for access orders and making of orders	

Part 2	Access orders	1
Division 1	Applications for access orders and making of orders	2
		3
7	Persons who may apply for a neighbouring land access order	4
(1)	A person who, for the purpose of carrying out work on land owned by the person, requires access to adjoining or adjacent land may apply to a Local Court for a neighbouring land access order.	5 6 7
(2)	A person who, for the purpose of carrying out work on land owned by another person, requires access to adjoining or adjacent land may apply to a Local Court for a neighbouring land access order with the consent of the person on whose behalf the work is to be carried out.	8 9 10 11
(3)	The Local Court may waive the requirement for consent under subsection (2) if it thinks it appropriate to do so in the circumstances.	12 13
8	Persons who may apply for a utility service access order	14
(1)	A person who, either solely or jointly, is entitled to the use of a utility service or a proposed utility service but who is not the owner of the whole or part of the land on which it is located or proposed to be located and who requires access to that land for the purpose of carrying out work on or in connection with the utility service may apply to a Local Court for a utility service access order.	15 16 17 18 19 20
(2)	A person may apply for a utility service access order even if there is an easement or other right of access (not being a right referred to in section 5 (2)) to the land concerned to carry out the work.	21 22 23
9	Person may apply for both orders	24
	A person who requires access for purposes referred to in both sections 7 and 8 may apply to a Local Court for both a neighbouring land access order and a utility service access order.	25 26 27

10	Notice of application for access order to be given to owners of affected land or services	1
		2
(1)	An applicant for an access order must give at least 21 days notice of the lodging of the application and the terms of any order sought:	3
		4
(a)	to the owner of the land to which access is sought under the application, and	5
		6
(b)	to any other person entitled to the use of any utility service on which work is proposed to be carried out, and	7
		8
(c)	to any other person the applicant has reason to believe will be affected by the order.	9
		10
(2)	The Local Court may direct that notice of an application be given to a person or that notice be given in a specified manner or within a specified period.	11
		12
		13
(3)	The Local Court may waive the requirement to give notice or vary the period of notice under this section if it thinks it appropriate to do so in the circumstances.	14
		15
		16
11	Jurisdiction to make neighbouring land access orders	17
(1)	A Local Court may make a neighbouring land access order if it is satisfied that, for the purpose of carrying out work on land, access to adjoining or adjacent land is required and it is satisfied that it is appropriate to make the order in the circumstances of the case.	18
		19
		20
		21
(2)	The Local Court must not make a neighbouring land access order unless it is satisfied:	22
		23
(a)	that the applicant has made a reasonable effort to reach agreement with every person whose consent to access is required as to the access and carrying out of the work, and	24
		25
		26
(b)	if the requirement to give notice has not been waived, that the applicant has given notice of the application in accordance with section 10 and section 34 (if applicable).	27
		28
		29
12	Types of work for which neighbouring land access orders may be made	30
		31
(1)	A neighbouring land access order may be made for one or more of the following purposes in connection with the land on which the work is to be carried out:	32
		33
		34

Clause 12 Access to Neighbouring Land Bill 2000

Part 2 Access orders

Division 1 Applications for access orders and making of orders

- (a) carrying out work of construction, repair, maintenance, improvement, decoration, alteration, adjustment, renewal or demolition of buildings and other structures, 1
 - (b) carrying out inspections for the purpose of ascertaining whether any such work is required, 2
 - (c) making plans in connection with such work, 3
 - (d) ascertaining the course of drains, sewers, pipes or cables and renewing, repairing or clearing them, 4
 - (e) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted, 5
 - (f) replacing any hedge, tree or shrub, 6
 - (g) removing, felling, cutting back or treating any hedge, tree or shrub, 7
 - (h) clearing or filling in ditches, 8
 - (i) carrying out any work that is necessary for, or incidental to, anything referred to in paragraphs (a)–(h). 9
 - (2) This section does not limit the kinds of work with respect to land for which a neighbouring land access order may be made. 10
- 13 Jurisdiction to make utility service access orders** 11
- (1) A Local Court may make a utility service access order if it is satisfied that access to land is required for the purpose of carrying out work on or in connection with a utility service situated on the land and it is satisfied that it is appropriate to make the order in the circumstances of the case. 12
 - (2) The Court must not make a utility service access order unless it is satisfied: 13
 - (a) that the applicant has made a reasonable effort to reach agreement with every person whose consent to access is required as to the access and carrying out of the work, and 14
 - (b) if the requirement to give notice has not been waived, that the applicant has given notice of the application in accordance with section 10 and section 34 (if applicable). 15

14	Types of work for which utility service access orders may be made	1
(1)	A utility service access order may be made for one or more of the following purposes:	2
		3
(a)	carrying out work of construction, repair, maintenance, improvement, adjustment or renewal of the utility service,	4
		5
(b)	connecting or disconnecting the service,	6
(c)	carrying out inspections for the purpose of ascertaining whether any such work is required,	7
		8
(d)	making plans in connection with any such work,	9
(e)	carrying out any work that is necessary for, or incidental to, anything referred to in paragraphs (a)–(d).	10
		11
(2)	This section does not limit the kinds of work with respect to a utility service for which a utility service access order may be made.	12
		13
15	Matters to be considered by Local Court	14
	Before determining an application for an access order the Local Court is to consider the following matters:	15
		16
(a)	whether the work cannot be carried out or would be substantially more difficult or expensive to carry out without access to the land the subject of the application,	17
		18
		19
(b)	whether the access would cause unreasonable hardship to a person affected by the order.	20
		21
16	Conditions of access orders	22
(1)	The Local Court may specify such conditions in an access order as, in its opinion, are reasonably necessary in the circumstances.	23
		24
(2)	Without limiting subsection (1), the conditions may include the following kinds of conditions:	25
		26
(a)	conditions imposed for the purpose of avoiding or minimising loss, damage or injury to the owner of the land to which access is granted or to any other person or to any other land or other property,	27
		28
		29
		30
(b)	conditions imposed for the purpose of avoiding or minimising inconvenience or loss of privacy caused to the owner of the land to which access is granted or to any other person,	31
		32
		33
(c)	conditions specifying precautions and safeguards,	34

Clause 16 Access to Neighbouring Land Bill 2000

Part 2 Access orders

Division 1 Applications for access orders and making of orders

- (d) conditions requiring the taking out of insurance cover by the applicant against such risks, if any, as may be specified, 1
2
- (e) conditions varying or dispensing with any or all of the provisions of Division 2, 3
4
- (f) conditions prohibiting or permitting access to a building or part of a building, or any other part of the land, 5
6
- (g) conditions providing for the reimbursement by the applicant of any expenses reasonably incurred by the owner of the land to which access is granted that are not recoverable as costs under section 27. 7
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10

17 Form of access orders 11

An access order is to specify: 12

- (a) the land to which it permits access, and 13
- (b) the work which may be carried out, and 14
- (c) the date on or from which access is permitted and the date when access ceases to be permitted and, if appropriate, the times during which access is permitted, and 15
16
17
- (d) any conditions specified by the Local Court, and 18
- (e) the provisions of Division 2, as applying to the order. 19

Division 2 Effect of access orders 20

18 General effect of neighbouring land access order 21

- (1) A neighbouring land access order authorises, for the purpose of carrying out work on land, a person to have access to adjoining or adjacent land in accordance with the order. 22
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24
- (2) Unless the Local Court varies or dispenses with any or all of the authorities and obligations set out in sections 20–22, a neighbouring land access order also authorises the actions, and imposes the obligations, set out in those sections. 25
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19 General effect of utility service access order 29

- (1) A utility service access order authorises a person to have access to land to carry out work on or in connection with a utility service on the land concerned in accordance with the order. 30
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32

(2) Unless the Local Court varies or dispenses with any or all of the authorities and obligations set out in sections 20–22, a utility service access order also authorises the actions, and imposes the obligations, set out in those sections.	1 2 3 4
20 Authority to carry out ancillary activities	5
An access order authorises:	6
(a) the access to and the remaining on the land concerned of such persons authorised by the applicant as are reasonably necessary to carry out the work, and	7 8 9
(b) the applicant to bring on, leave on and remove from the land such materials, plant and equipment as are reasonably necessary for carrying out the work, and	10 11 12
(c) the applicant to remove from the land any waste that may arise from carrying out the work.	13 14
21 Restoration of land and indemnity for damage	15
The applicant must:	16
(a) restore the land concerned to the same condition it was in before the access, so far as is reasonably practicable, on or before the date specified in the order for that purpose, and	17 18 19
(b) indemnify the owner of the land to which access is granted against damage to the land or personal property arising from the access.	20 21 22
22 Owner's obligations	23
The owner of the land to which access is granted must permit access to the land in accordance with the order and this Act.	24 25
23 Persons bound by access order	26
(1) A person who is not a party to the proceedings for an access order, or expressly bound by the order, is not bound by the access order.	27 28
(2) However, a successor in title to an owner of land to which access is granted is bound by that order in the same way as that owner.	29 30
(3) An access order does not confer on any party to the order any interest in the land to which access is granted sufficient to enable any such person to place a caveat on the title to the land under the <i>Real Property Act 1900</i> .	31 32 33 34

Clause 24	Access to Neighbouring Land Bill 2000
Part 2	Access orders
Division 3	Other provisions relating to access orders

Division 3	Other provisions relating to access orders	1
24	Variation and revocation of access orders	2
	A Local Court may vary or revoke an access order on application by the applicant for the order or by any other person affected by the order.	3 4
25	When access orders cease to be in force	5
(1)	An access order ceases to have effect on the date specified in the order or on revocation under section 24.	6 7
(2)	The cessation or revocation of an order does not affect the previous operation of the order.	8 9
(3)	The cessation or revocation of an order does not prevent the enforcement by the owner of the land to which access is granted of any conditions of the order or obligations of the applicant imposed by this Act.	10 11 12 13
26	Compensation	14
(1)	A Local Court may order that a person to whom an access order is granted pay compensation to the owner of the land to which access is granted for loss, damage or injury, including damage to personal property, financial loss and personal injury arising from the access.	15 16 17 18
(2)	Compensation is not payable under this section for loss of privacy or inconvenience suffered by the owner solely as a result of access authorised by the access order or solely because of the making of the order.	19 20 21 22
(3)	An order for compensation may be made at any time and may be made whether or not the access order is in force.	23 24
(4)	An action for an order for compensation may not be brought more than 3 years after the last date on which access occurred under the order.	25 26
(5)	Any such order is enforceable as if it were a judgment for that amount by a Local Court exercising jurisdiction under the <i>Local Courts (Civil Claims) Act 1970</i> .	27 28 29
27	Costs	30
(1)	The costs of an application for an access order are payable at the Local Court's discretion.	31 32

- (2) In determining whether the whole or part of the costs of an application for an access order are payable by a party, the Local Court may consider the following matters:
- (a) any attempts by the parties to reach agreement before the proceedings,
 - (b) whether the refusal to consent to access was unreasonable in the circumstances,
 - (c) any other matter it thinks fit.

28 Failure to comply with access order

- (1) A person:
- (a) to whom an access order is granted or who obtains access to land under an access order, or
 - (b) who is required to give access to land under an access order,
- must not fail to comply with a condition or requirement of an access order that is applicable to the person.
- Maximum penalty: 5 penalty units.
- (2) It is a defence in any proceedings for an offence under this section if the other party to the access order affected by the failure to comply with a condition or requirement of the order consented to the failure to comply.
- (3) In addition to any other remedy, a Local Court may make an order for payment of damages by a party to the proceedings who fails to comply with a condition or requirement of an access order or of Division 2 as applied to that order.
- (4) Any such order is enforceable as if it were a judgment for that amount by a Local Court exercising jurisdiction under the *Local Courts (Civil Claims) Act 1970*.

Part 3	Transfer of proceedings to other courts and appeals	1 2
29	Transfer of matters to other courts	3
(1)	A Local Court must order the transfer of the whole or any part of proceedings for compensation under this Act to the Land and Environment Court, if the amount of any compensation or damages involved is likely to exceed the amount of the Local Court's jurisdiction in an action for the recovery of a debt under the <i>Local Courts (Civil Claims) Act 1970</i> .	4 5 6 7 8 9
(2)	The Land and Environment Court may at any stage of proceedings transferred under subsection (1) order the transfer of the whole or any part of the proceedings back to the Local Court.	10 11 12
(3)	An order for the transfer of proceedings under this section may be made on the Court's own motion or on the application of a party to the proceedings.	13 14 15
(4)	The Land and Environment Court has, in respect of proceedings transferred under this section and in addition to any other jurisdiction and functions it has, the same jurisdiction and functions as are conferred on a Local Court by or under this Act (other than sections 30 and 31).	16 17 18 19 20
30	Referral of questions of law by Local Courts	21
(1)	If, in proceedings before it under this Act, a question of law arises, a Local Court may decide the question or refer it to the Land and Environment Court for decision.	22 23 24
(2)	If a question of law is referred to the Land and Environment Court by a Local Court, the Local Court must not make an order or decision to which the question is relevant until the Land and Environment Court has decided the question.	25 26 27 28
(3)	On deciding the question, the Land and Environment Court must remit its decision to the Local Court and that Court must not proceed in a manner, or make an order or decision, that is inconsistent with the decision of the Land and Environment Court.	29 30 31 32
(4)	A reference under this section is to be made in accordance with rules of the Land and Environment Court.	33 34

31 Appeals from decisions of Local Courts	1
(1) A party to proceedings before a Local Court for an access order may appeal to the Land and Environment Court, on a question of law, against a decision to grant or not to grant an access order.	2 3 4
(2) The appeal must be made within 30 days after the decision to grant or not to grant the access order is made.	5 6
(3) If a party to proceedings before a Local Court appeals to the Land and Environment Court under this section, either the Local Court or the Land and Environment Court, may suspend, until the appeal is determined, the operation of any order or decision made in the proceedings.	7 8 9 10 11
(4) The Local Court may terminate a suspension of the operation of an order or a decision suspended by it. The Land and Environment Court may terminate a suspension of the operation of an order or decision suspended by it or by a Local Court.	12 13 14 15

Part 4 Miscellaneous provisions

1

32 Repair and maintenance of joint services

2

- (1) If 2 or more owners of land are jointly entitled to the use of a utility service, those persons are jointly liable for any repair or maintenance of that service by or on behalf of one of the owners if:
- (a) the owner who carried out the repair or maintenance or on whose behalf it is carried out is liable for that repair or maintenance as a user of the service, and
- (b) that liability does not arise from any fault of the owner by or on whose behalf the repair or maintenance is carried out.
- (2) This section is subject to any contract or arrangement between the owner and the provider of the utility service and to the provisions of any other Act.

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33 Agreements for access to neighbouring land

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- (1) The regulations may make provision for or with respect to a model form of agreement or agreements for the following purposes:
- (a) to enable a person who requires access to adjoining or adjacent land, for the purpose of carrying out work on the person's land, to gain access to the adjoining or adjacent land,
- (b) to enable a person who requires access to land on which a utility service which the person is entitled to use is situated, for the purpose of carrying out work on the utility service, to gain access to the land.
- (2) Any such model agreement may apply rights and obligations under this Act to a party to the agreement.
- (3) A person may, but is not required to, enter into a model agreement prescribed under this section.
- (4) Nothing in this Act prevents access to land being given by consent of the owner of the land.

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34	Native title interests	1
(1)	A person seeking an access order in respect of land in relation to which there is an approved determination of native title that native title exists must give notice under section 10 to the registered native title body corporate for that land.	2 3 4 5
(2)	A person seeking an access order in respect of land in relation to which there has not been an approved determination of native title that native title exists but in respect of which there may be native title holders must give notice under section 10 to:	6 7 8 9
(a)	any registered native title claimants in respect of the land, and	10
(b)	any representative Aboriginal/Torres Strait Islander bodies for the area concerned.	11 12
(3)	A registered native title body corporate has in respect of the land for which it is such a body corporate the same rights and obligations under this Act as any other owner of land.	13 14 15
(4)	In this section:	16
	<i>approved determination of native title</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	17 18
	<i>native title holder</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	19 20
	<i>registered native title body corporate</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	21 22
	<i>registered native title claimant</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	23 24
	<i>representative Aboriginal/Torres Strait Islander body</i> has the same meaning as it has in the <i>Native Title Act 1993</i> of the Commonwealth.	25 26
35	Contracting out of Act prohibited	27
	Any agreement, whether made before or after the commencement of this section, which would have the effect of preventing or restricting a person from applying for an access order is void to the extent that it would have that effect.	28 29 30 31
36	How notices may be served	32
(1)	A notice under this Act may be given to a person personally or by post addressed to the last known place of residence or business of the person to whom the notice is addressed.	33 34 35

Clause 36 Access to Neighbouring Land Bill 2000

Part 4 Miscellaneous provisions

(2) However, a notice under this Act that is required to be given to a registered native title claimant or a representative Aboriginal/Torres Strait Islander body is to be served in accordance with section 103 (3) of the <i>Native Title (New South Wales) Act 1994</i> .	1 2 3 4
37 Proceedings for applications or offences	5
Proceedings for applications under this Act, or offences against this Act, are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.	6 7 8
38 Regulations	9
(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	10 11 12 13
(2) In particular, the regulations may make provision for or with respect to the service of notices or orders where the owner of land or any other person cannot be found.	14 15 16
(3) The Local Court Rule Committee established under the <i>Local Courts Act 1982</i> may make rules for or with respect to regulating the practice and procedures of Local Courts in proceedings under this Act.	17 18 19
39 Amendment of Land and Environment Court Act 1979	20
The <i>Land and Environment Court Act 1979</i> is amended as set out in Schedule 1.	21 22
40 Review of Act	23
(1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.	24 25 26
(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.	27 28
(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.	29 30

**Schedule 1 Amendment of Land and Environment
Court Act 1979 No 204**

(Section 39)

**[1] Section 19 Class 3—land tenure, valuation, rating and compensation
matters**

Insert after section 19 (e1):

(e2) proceedings under sections 29, 30 and 31 of the *Access to
Neighbouring Land Act 2000*,

[2] Section 36 Delegation to Commissioners

Insert “or subsection (1B)” after “paragraph (b)” in section 36 (1) (a).

[3] Section 36 (1B):

Insert after section 36 (1A):

(1B) The Chief Judge may not direct under this section that
proceedings under section 29, 30 or 31 of the *Access to
Neighbouring Land Act 2000* are to be heard and disposed of
by one or more Commissioners.

[4] Section 39 Powers of Court on appeals

Insert after section 39 (7):

(8) This section (other than subsection (5)) does not apply to
proceedings under section 30 or 31 of the *Access to
Neighbouring Land Act 2000*.