

Passed by both Houses



New South Wales

Access to Neighbouring Land 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

Access to Neighbouring Land Bill 2000

Act No , 2000

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.

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.

Clause 1 Access to Neighbouring Land Bill 2000

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

2 Commencement

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

3 Definitions

In this Act:

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

function includes a power, authority or duty.

land includes a stratum of air above or a stratum of soil below the surface of the earth.

neighbouring land access order means an order made under this Act authorising access to adjoining or adjacent land.

owner includes a joint owner or an occupier.

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.

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.

4 Act binds Crown

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.

5 Act does not authorise work, activity or access if regulated or prohibited by or under other Act

(1) Nothing in this Act:

- (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
 - (b) enables a person to carry out any work or engage in any activity that is prohibited by or under any other Act.
- (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.

6 Act does not apply to land under National Parks and Wildlife Act 1974

This Act does not apply to or in respect of the following land under the *National Parks and Wildlife Act 1974*:

- (a) land reserved as a national park, historic site, state recreation area or regional park,
- (b) land dedicated as a nature reserve, state game reserve, karst conservation reserve or Aboriginal area,
- (c) land declared under that Act to be an Aboriginal place.

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Part 2 Access orders

Division 1 Applications for access orders and making of orders

7 Persons who may apply for a neighbouring land access order

- (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.
- (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.
- (3) The Local Court may waive the requirement for consent under subsection (2) if it thinks it appropriate to do so in the circumstances.

8 Persons who may apply for a utility service access order

- (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.
- (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.

9 Person may apply for both orders

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.

10 Notice of application for access order to be given to owners of affected land or services

- (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:
 - (a) to the owner of the land to which access is sought under the application, and
 - (b) to any other person entitled to the use of any utility service on which work is proposed to be carried out, and
 - (c) to any other person the applicant has reason to believe will be affected by the order.
- (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.
- (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.

11 Jurisdiction to make neighbouring land access orders

- (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.
- (2) The Local Court must not make a neighbouring land access order unless it is satisfied:
 - (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
 - (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).

12 Types of work for which neighbouring land access orders may be made

- (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:

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- (a) carrying out work of construction, repair, maintenance, improvement, decoration, alteration, adjustment, renewal or demolition of buildings and other structures,
 - (b) carrying out inspections for the purpose of ascertaining whether any such work is required,
 - (c) making plans in connection with such work,
 - (d) ascertaining the course of drains, sewers, pipes or cables and renewing, repairing or clearing them,
 - (e) ascertaining whether any hedge, tree or shrub is dangerous, dead, diseased, damaged or insecurely rooted,
 - (f) replacing any hedge, tree or shrub,
 - (g) removing, felling, cutting back or treating any hedge, tree or shrub,
 - (h) clearing or filling in ditches,
 - (i) carrying out any work that is necessary for, or incidental to, anything referred to in paragraphs (a)–(h).
- (2) This section does not limit the kinds of work with respect to land for which a neighbouring land access order may be made.

13 Jurisdiction to make utility service access orders

- (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.
- (2) The Court must not make a utility service access order unless it is satisfied:
- (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
 - (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).

14 Types of work for which utility service access orders may be made

- (1) A utility service access order may be made for one or more of the following purposes:
 - (a) carrying out work of construction, repair, maintenance, improvement, adjustment or renewal of the utility service,
 - (b) connecting or disconnecting the service,
 - (c) carrying out inspections for the purpose of ascertaining whether any such work is required,
 - (d) making plans in connection with any such work,
 - (e) carrying out any work that is necessary for, or incidental to, anything referred to in paragraphs (a)–(d).
- (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.

15 Matters to be considered by Local Court

Before determining an application for an access order the Local Court is to consider the following matters:

- (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,
- (b) whether the access would cause unreasonable hardship to a person affected by the order.

16 Conditions of access orders

- (1) The Local Court may specify such conditions in an access order as, in its opinion, are reasonably necessary in the circumstances.
- (2) Without limiting subsection (1), the conditions may include the following kinds of conditions:
 - (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,
 - (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,
 - (c) conditions specifying precautions and safeguards,

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- (d) conditions requiring the taking out of insurance cover by the applicant against such risks, if any, as may be specified,
- (e) conditions varying or dispensing with any or all of the provisions of Division 2,
- (f) conditions prohibiting or permitting access to a building or part of a building, or any other part of the land,
- (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.

17 Form of access orders

An access order is to specify:

- (a) the land to which it permits access, and
- (b) the work which may be carried out, and
- (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
- (d) any conditions specified by the Local Court, and
- (e) the provisions of Division 2, as applying to the order.

Division 2 Effect of access orders

18 General effect of neighbouring land access order

- (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.
- (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.

19 General effect of utility service access order

- (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.

- (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.

20 Authority to carry out ancillary activities

An access order authorises:

- (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
- (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
- (c) the applicant to remove from the land any waste that may arise from carrying out the work.

21 Restoration of land and indemnity for damage

The applicant must:

- (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
- (b) indemnify the owner of the land to which access is granted against damage to the land or personal property arising from the access.

22 Owner's obligations

The owner of the land to which access is granted must permit access to the land in accordance with the order and this Act.

23 Persons bound by access order

- (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.
- (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.
- (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 *Real Property Act 1900*.

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Division 3 Other provisions relating to access orders

24 Variation and revocation of access orders

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.

25 When access orders cease to be in force

- (1) An access order ceases to have effect on the date specified in the order or on revocation under section 24.
- (2) The cessation or revocation of an order does not affect the previous operation of the order.
- (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.

26 Compensation

- (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.
- (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.
- (3) An order for compensation may be made at any time and may be made whether or not the access order is in force.
- (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.
- (5) 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*.

27 Costs

- (1) The costs of an application for an access order are payable at the Local Court's discretion.

- (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

29 Transfer of matters to other courts

- (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 *Local Courts (Civil Claims) Act 1970*.
- (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.
- (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.
- (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).

30 Referral of questions of law by Local Courts

- (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.
- (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.
- (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.
- (4) A reference under this section is to be made in accordance with rules of the Land and Environment Court.

31 Appeals from decisions of Local Courts

- (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) The appeal must be made within 30 days after the decision to grant or not to grant the access order is made.
- (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.
- (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.

Part 4 Miscellaneous provisions

32 Repair and maintenance of joint services

- (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.

33 Agreements for access to neighbouring land

- (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.

34 Native title interests

- (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) 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:
 - (a) any registered native title claimants in respect of the land, and
 - (b) any representative Aboriginal/Torres Strait Islander bodies for the area concerned.
- (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.
- (4) In this section:

approved determination of native title has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

native title holder has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

registered native title body corporate has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

registered native title claimant has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

representative Aboriginal/Torres Strait Islander body has the same meaning as it has in the *Native Title Act 1993* of the Commonwealth.

35 Contracting out of Act prohibited

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.

36 How notices may be served

- (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.

- (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 *Native Title (New South Wales) Act 1994*.

37 Proceedings for applications or offences

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.

38 Regulations

- (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.
- (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.
- (3) The Local Court Rule Committee established under the *Local Courts Act 1982* may make rules for or with respect to regulating the practice and procedures of Local Courts in proceedings under this Act.

39 Amendment of Land and Environment Court Act 1979

The *Land and Environment Court Act 1979* is amended as set out in Schedule 1.

40 Review of Act

- (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.
- (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.
- (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.

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*.