



New South Wales

Real Property Amendment (Electronic Conveyancing) Bill 2015

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Real Property Act 1900*:
 - (i) to enable the Registrar-General to make rules (called the *conveyancing rules*) for or with respect to the preparation and lodgment of paper documents to give effect to conveyancing transactions under the Act, and
 - (ii) to enable a person who is involved in a conveyancing transaction under the Act to give a client authorisation to a representative to enable the representative to do things on the person's behalf in connection with the transaction, and
 - (iii) to consolidate and standardise the provisions of the Act concerning the certification of the correctness of certain conveyancing transactions (whether conducted in paper or electronic form), and
 - (iv) to provide that certain paper conveyancing documents that are required under the Act to be executed or witnessed can be certified or authenticated by such other means as may be provided by the conveyancing rules, and
 - (v) to enable a person who intends to lodge a dealing to give effect to a legal or equitable interest in land claimed by the person to lodge a priority notice to prevent the Registrar-General from recording certain other dealings concerning the land for a limited period pending the lodgment of the proposed dealing for registration, and
 - (vi) to enable the Registrar-General to cease to issue certificates of title on and from a day to be declared by the Registrar-General by order published in the Gazette and to

- confirm that, before that day, the Registrar-General may cease to issue certificates of title on a staged basis, and
- (vii) to provide that, after certificates of title are no longer issued, the Registrar-General may rely on either paper or electronic consents for certain conveyancing transactions given by the person who is recorded in the Register as having control of the right to deal in the land concerned, and
 - (viii) to enable the Registrar-General to designate certain persons employed in the Public Service to be Deputy Registrars-General and to provide for their functions, and
 - (ix) to enable an Australian address to be specified as an address for service in a caveat lodged under the Act, and
- (b) to make consequential amendments to the *Interpretation Act 1987* and *Real Property Regulation 2014*.

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.

Schedule 1 Amendment of Real Property Act 1900 No 25

1.1 Amendments concerning conveyancing rules

Schedule 1.1 amends the *Real Property Act 1900* (the *principal Act*):

- (a) to enable the Registrar-General to make rules (called the *conveyancing rules*) for or with respect to the preparation and lodgment of paper documents to give effect to conveyancing transactions under the Act, and
- (b) to define the term *conveyancing transaction* for this purpose in a manner consistent with the *Electronic Conveyancing National Law (NSW)*.

1.2 Amendments concerning client authorisations

Schedule 1.2 amends the principal Act:

- (a) to enable a law practice or licensed conveyancer to be authorised by a person under a client authorisation to carry out certain transactions on the person's behalf for the purposes of the principal Act, and
- (b) to define the term *authorised representative* for this purpose, and
- (c) to provide for the effect of signatures under a client authorisation (and the repudiation of such signatures).

The provisions to be inserted are modelled on those in the *Electronic Conveyancing National Law (NSW)* and they also provide that a client authorisation under that Law can also have effect as a client authorisation under the principal Act.

1.3 Amendment concerning certifications of correctness

Schedule 1.3 amends the principal Act to consolidate the provisions of sections 117 and 117A into one section concerning the certification of the correctness of certain conveyancing transactions (whether conducted in paper or electronic form).

1.4 Amendment concerning execution and attestation

Schedule 1.4 amends the principal Act to provide that certain paper conveyancing documents that are required to be executed or witnessed under the principal Act can be certified or authenticated by such other means as may be provided by the conveyancing rules.

1.5 Amendments concerning priority notices

Schedule 1.5 amends the principal Act to insert a new Part 7B that deals with priority notices.

The new Part will enable a person who intends to lodge a dealing to give effect to a legal or equitable interest in land claimed by the person to lodge a priority notice. The lodgment of a priority notice will reserve the priority of the dealings specified in the notice by preventing the Registrar-General from registering certain other dealings and plans concerning the land for a limited period (initially 60 days, with the possibility of an extension to 90 days) pending the lodgment of the proposed dealings for registration.

The new Part also provides for the following:

- (a) interpretative provisions (see proposed section 74S),
- (b) requirements with respect to the lodgment of priority notices (see proposed section 74T),
- (c) the recording, and removal of such recordings, in the Register under the Act by the Registrar-General (see proposed sections 74U and 74X (2)),
- (d) the circumstances when priority notices cease to have effect (see proposed section 74V),
- (e) the effect of priority notices (see proposed section 74W),
- (f) the withdrawal of priority notices by persons lodging such notices, whether voluntarily or by order of the Supreme Court (see proposed sections 74X (1) and 74Y),
- (g) the liability to pay compensation for pecuniary loss in connection with the lodgment of, or the refusal or failure to withdraw, priority notices where there has been no reasonable cause for the lodgment or the refusal or failure to withdraw (see proposed section 74Z).

Schedule 1.5 also makes a number of amendments to the principal Act that are consequential on the creation of priority notices.

1.6 Amendments concerning certificates of title and consents

Schedule 1.6 amends the principal Act:

- (a) to enable the Registrar-General to cease to issue certificates of title on and from a day to be declared by the Registrar-General by order published in the Gazette, and
- (b) to enable consents to certain conveyancing transactions involving land for which there is no certificate of title to be given in either paper or electronic form once certificates of title can no longer be issued, and
- (c) to confirm that, before that day, the Registrar-General may cease to issue certificates of titles to particular classes of persons on a staged basis under section 33AA of the principal Act.

1.7 Amendments concerning Registrar-General and Deputy Registrars-General

Schedule 1.7 amends the principal Act:

- (a) to insert a definition of *Registrar-General* in the Act, and
- (b) to enable the Registrar-General to designate certain persons employed in the Public Service to be Deputy Registrars-General or the Senior Deputy Registrar-General, and
- (c) to provide for the circumstances in which a Deputy Registrar-General may act as the Registrar-General when there is no Registrar-General or the Registrar-General is absent from duty, and
- (d) to provide for the functions of Deputy Registrars-General (including the delegation to them of functions of the Registrar-General by the Registrar-General).

1.8 Amendments concerning service of notices on caveators

Schedule 1.8 amends the principal Act to enable an Australian address to be specified as an address for service in a caveat lodged under the principal Act.

Schedule 2 Consequential amendment of other legislation

Schedule 2.1 substitutes the definition of *Registrar-General* in the *Interpretation Act 1987* with a definition that is consistent with the definition to be inserted by Schedule 1.7.

Schedule 2.2 makes an amendment to the *Real Property Regulation 2014* that is consequential on the amendment made by Schedule 1.3.