



New South Wales

# Real Property Amendment (Compensation) 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 amend the *Real Property Act 1900* so as:

- (a) to enable persons who are deprived of land, or who otherwise suffer loss, as a consequence of the operation of that Act to make claims for compensation against the Torrens Assurance Fund directly rather than, as is presently the case, generally restricting the payment of compensation from that Fund to circumstances in which other legal remedies have been exhausted, and
- (b) to require persons who attest certain transactions for the purposes of that Act to certify that they have witnessed the execution of those transactions.

The Bill also makes a consequential amendment to the *Professional Standards Act 1994*.

The provisions relating to the payment of compensation are currently contained in Part 14 of the *Real Property Act 1900*, together with provisions relating to the civil rights and remedies that are available to persons who are deprived of land, or who otherwise suffer loss, as a consequence of the operation of that Act. The opportunity has been taken to repeal and re-enact the whole of Part 14 and, in the process, to divide its subject-matter into two Parts (Part 13 dealing with civil rights and remedies and Part 14 dealing with claims for compensation) and to re-state that subject-matter in a clearer style.

## 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 *Real Property Act 1900* set out in Schedule 1.

**Clause 4** makes a consequential amendment to the *Professional Standards Act 1994*.

## Civil rights and remedies and claims for compensation against the Torrens Assurance Fund

**Schedule 1 [12]** repeals Part 14 and replaces it with new Parts 13 and 14 (there being no Part 13 at present). The new Parts are arranged as follows:

### Part 13 Civil rights and remedies

#### Division 1 Proceedings for the possession or recovery of land

**Proposed section 118** re-enacts existing section 124. The proposed section provides that proceedings for the possession or recovery of land do not lie against the registered proprietor of land except in certain specified circumstances. This section is one of the pillars that supports the principle of indefeasibility of title to land to which the Act applies.

**Proposed section 119** re-enacts existing section 125. The proposed section deals with the situation where a person who has become the registered proprietor of land, and has made improvements to the land, becomes the subject of a claim by some other person who is the registered proprietor of some or all of the same land

because of two folios having been created in respect of the same land where the claimant is the registered proprietor under the earlier folio. Essentially, the claimant does not recover the land unless the claimant contributes to the cost of the improvements that have been made.

## **Division 2      Proceedings for compensation**

**Proposed section 120** re-enacts existing section 126. The proposed section provides that a person who suffers loss or damage as a result of the operation of the Act in respect of any land is, in certain circumstances, entitled to recover damages for the loss or damage, either against the person responsible for the loss or damage or against the Registrar-General. Claims against the Registrar-General have to be made in accordance with proposed Part 14.

## **Division 3      Review of Registrar-General's actions**

**Proposed section 121** re-enacts existing section 121 (1). The proposed section requires the Registrar-General to provide reasons for certain of his or her decisions if requested to do so by persons who are dissatisfied with those decisions.

**Proposed section 122** re-enacts existing section 121 (2)–(8). The proposed section provides that a person who is dissatisfied with certain of the Registrar-General's decisions may apply to the Supreme Court for a review of the decision, and that the Supreme Court may uphold or vary the decision.

**Proposed section 123** re-enacts existing section 122. The proposed section provides that a person who applies for certain action to be taken by the Registrar-General in relation to land may state a case for the opinion of the Supreme Court on any objection that is made by the Registrar-General to the title to the land.

**Proposed section 124** re-enacts existing section 123. The proposed section provides that the Registrar-General may state a case for the opinion of the Supreme Court in relation to certain questions arising under the Act.

**Proposed section 125** re-enacts existing section 123A. The proposed section enables the Supreme Court to make orders as to costs in relation to proceedings under proposed Division 3, and provides for payment from the Torrens Assurance Fund of the costs payable by the Registrar-General.

## **Division 4      General**

**Proposed section 126** empowers the Registrar-General to intervene in any civil proceedings that may result in compensation becoming payable from the Torrens Assurance Fund. If the Registrar-General intervenes, he or she becomes a party to the proceedings.

**Proposed section 127** re-enacts existing section 130. The proposed section bars certain claims concerning certain actions by the Registrar-General where the claimant has been notified of the proposed action and has failed to lodge a caveat to prevent that action being taken.

## **Part 14 The Torrens Assurance Fund**

### **Division 1      Preliminary**

**Proposed section 128** defines various words and expressions for the purposes of the proposed Part.

### **Division 2      Compensation generally**

**Proposed section 129** specifies the circumstances in which compensation is payable from the Torrens Assurance Fund, and the limitations on the payment of compensation.

**Proposed section 130** enables the Minister to direct ex gratia payments of compensation, on the recommendation of the Registrar-General, in respect of matters for which compensation is not otherwise payable.

### **Division 3      Administrative proceedings**

**Proposed section 131** provides that a person who has suffered compensable loss may lodge a claim for compensation with the Registrar-General within 6 years after the act or omission giving rise to the loss or, if the loss arose on a later date, within 6 years after that later date. The maximum compensation payable is \$100,000 (or such other amount as may be prescribed by the regulations under the Act). The claimant will be required to co-operate in the claim proceedings. A claim will be taken to have been refused if it has not been determined within 12 months after it was made unless the claimant is in default of the duty to co-operate in the claim proceedings, in which case that time is extended.

#### **Division 4      Court proceedings**

**Proposed section 132** provides that court proceedings for the payment of compensation from the Torrens Assurance Fund are to be taken against the Registrar-General. Such proceedings cannot be commenced before an administrative claim has been made and determined, and cannot be made more than 12 months after the administrative claim has been determined, except by leave of the court or with the consent of the Registrar-General. In any such proceedings, the Registrar-General is not bound by any prejudicial act or omission by any party to the proceedings.

#### **Division 5      Miscellaneous**

**Proposed section 133** provides that a professional indemnity insurer cannot be subrogated to any other person in respect of that person's right to claim compensation from the Torrens Assurance Fund, and further provides that on the commencement of administrative or court proceedings by a claimant against the Torrens Assurance Fund, the Registrar-General is subrogated to the claimant's rights against any other person.

**Proposed section 134** re-enacts existing section 133A. The proposed section establishes the Torrens Assurance Fund, and specifies how it is to be operated.

**Proposed section 135** re-enacts existing section 129. The proposed section confers power on the Registrar-General to settle any claim for payment of compensation from the Torrens Assurance Fund.

#### **Certification of transactions**

**Schedule 1 [11]** substitutes section 117 (1). The proposed subsection provides that the Registrar-General may reject, or refuse to accept or take any action in relation to, any primary application, dealing or caveat unless it bears certain certificates. One certificate (signed by or on behalf of each person by whom the transaction is executed) must state that the transaction is correct for the purposes of the Act. The other certificate (signed by each witness to the execution of the transaction) must state that the witness is satisfied as to the identity of the person to whose execution of the transaction the witness is attesting and that the execution of the transaction by that person occurred in the presence of the witness.

## Miscellaneous matters

**Schedule 1 [1]** amends the definition of *Licensed conveyancer* in section 3 (1) so as to update a reference to the Act under which conveyancers are licensed.

**Schedule 1 [2]** inserts a definition of *Fraud* into section 3 (1) so as to make it clear that the expression extends to frauds involving fictitious persons.

**Schedule 1 [3], [4], [5], [7] and [10]** make consequential amendments to sections 3, 28O, 28ZC, 93 and 105A.

**Schedule 1 [6]** inserts proposed section 45, which re-enacts existing section 135 (currently located in Part 14, which is to be repealed by proposed Schedule 1 [12]). The proposed section protects bona fide purchasers and mortgagees in relation to fraudulent and other transactions. This section is another of the pillars that supports the principle of indefeasibility of title to land to which the Act applies.

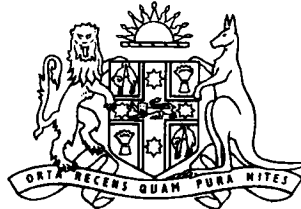
**Schedule 1 [8]** repeals section 96I (1), which is to become part of proposed section 129, and **Schedule 1 [9]** makes a consequential amendment to section 96I (2).

**Schedule 1 [13]** inserts proposed section 146, which re-enacts existing section 134 (currently located in Part 14, which is to be repealed by proposed Schedule 1 [12]). The proposed section excludes the Registrar-General, and any person acting under the direction of the Registrar-General, from any personal liability for acts and omissions done or omitted by them in the administration or execution of the Act.

**Schedule 1 [14]** amends clause 1 of Schedule 3 so as to enable regulations under the Act to make provision of a savings or transitional nature consequent on the enactment of the proposed Act.

**Schedule 1 [15]** adds a new Part 5 at the end of Schedule 3. The new Part (proposed clauses 10–15) contains specific savings and transitional provisions consequent on the enactment of the proposed Act.

First print



New South Wales

# Real Property Amendment (Compensation) Bill 2000

## Contents

---

|  | Page |
|--|------|
| 1 Name of Act  | 2    |
| 2 Commencement                                       | 2    |
| 3 Amendment of Real Property Act 1900 No 25          | 2    |
| 4 Amendment of Professional Standards Act 1994 No 81 | 2    |
| Schedule 1 Amendment of Real Property Act 1900       | 3    |



New South Wales

# Real Property Amendment (Compensation) Bill 2000

No. , 2000

---

## A Bill for

An Act to amend the *Real Property Act 1900* in relation to civil rights and remedies under that Act and in relation to the payment of compensation out of the Torrens Assurance Fund; and for other purposes.

---



|  |          |
|--|----------|
| <b>The Legislature of New South Wales enacts:</b>  | 1        |
| <b>1 Name of Act</b>   | 2        |
| This Act is the <i>Real Property Amendment (Compensation) Act 2000</i> .   | 3        |
| <b>2 Commencement</b>  | 4        |
| This Act commences on a day or days to be appointed by proclamation.   | 5<br>6   |
| <b>3 Amendment of Real Property Act 1900 No 25</b>   | 7        |
| The <i>Real Property Act 1900</i> is amended as set out in Schedule 1.   | 8        |
| <b>4 Amendment of Professional Standards Act 1994 No 81</b>  | 9        |
| The <i>Professional Standards Act 1994</i> is amended by inserting the words “13 or” after the word “Part” in section 5 (2). | 10<br>11 |

---

**Schedule 1 Amendment of Real Property Act 1900**

1

(Section 3)

2

**[1] Section 3 Definitions**

3

Omit “1992” from the definition of *Licensed conveyancer* in section 3 (1).  
Insert instead “1995”.

4

5

**[2] Section 3 (1)**

6

Insert after the definition of *Easement in gross*:

7

*Fraud*—Fraud includes fraud involving a fictitious person.

8

**[3] Section 3 (1), definition of “Torrens Assurance Fund”**

9

Omit “section 133A”. Insert instead “section 134”.

10

**[4] Section 28O Certain proceedings against Registrar-General barred**

11

Omit “Part 14”. Insert instead “Parts 13 and 14”.

12

**[5] Section 28ZC Certain proceedings against Registrar-General barred**

13

Omit “Part 14”. Insert instead “Parts 13 and 14”.

14

**[6] Section 45**

15

Insert after section 44:

16

**45 Bona fide purchasers and mortgagees protected in relation to fraudulent and other transactions**

17

18

(1) Except to the extent to which this Act otherwise expressly provides, nothing in this Act is to be construed so as to deprive any purchaser or mortgagee bona fide for valuable consideration of any estate or interest in land under the provisions of this Act in respect of which the person is the registered proprietor.

19

20

21

22

23

24

|  |    |
|--|----|
| (2) Despite any other provision of this Act, proceedings for the recovery of damages, or for the possession or recovery of land, do not lie against a purchaser or mortgagee bona fide for valuable consideration of land under the provisions of this Act merely because the vendor or mortgagor of the land: | 1  |
|  | 2  |
|  | 3  |
|  | 4  |
|  | 5  |
| (a) may have been registered as proprietor through fraud or error, or by means of a void or voidable instrument, or  | 6  |
|  | 7  |
| (b) may have procured the registration of the relevant transfer or mortgage to the purchaser or mortgagee through fraud or error, or by means of a void or voidable instrument, or   | 8  |
|  | 9  |
|  | 10 |
|  | 11 |
| (c) may have derived his or her right to registration as proprietor from or through a person who has been registered as proprietor through fraud or error, or by means of a void or voidable instrument.   | 12 |
|  | 13 |
|  | 14 |
|  | 15 |
| (3) Subsection (2) applies whether the fraud or error consists of a misdescription of the land or its boundaries or otherwise.   | 16 |
|  | 17 |
| <b>[7] Section 93 Transmission on death of proprietor</b>  | 18 |
| Omit "section 133" from section 93 (4).  | 19 |
| Insert instead "section 129 (2) (f)".  | 20 |
| <b>[8] Section 96I Matters arising from official searches</b>  | 21 |
| Omit section 96I (1).  | 22 |
| <b>[9] Section 96I (2)</b>   | 23 |
| Omit "a person referred to in subsection (1)".   | 24 |
| Insert instead "a person in connection with the purchase, disposal or other dealing with land".  | 25 |
|  | 26 |
| <b>[10] Section 105A Effect of recording writ</b>  | 27 |
| Omit "section 121 (7), 123" from section 105A (1) (p).   | 28 |
| Insert instead "section 122 (4), 124".   | 29 |

---

|  |    |
|--|----|
| <b>[11] Section 117 Certificate of correctness</b>   | 1  |
| Omit section 117 (1). Insert instead:  | 2  |
| (1) The Registrar-General may reject, or may refuse to accept or to take any action in relation to, any primary application, dealing or caveat unless it bears the following certificates:                   | 3  |
|  | 4  |
|  | 5  |
| (a) a certificate (signed by or on behalf of each person by whom the dealing or caveat has been executed) to the effect that the application, dealing or caveat is correct for the purposes of this Act, and | 6  |
|  | 7  |
|  | 8  |
|  | 9  |
| (b) a certificate (signed by each witness to the execution of the application, dealing or caveat) to the effect that:  | 10 |
|  | 11 |
| (i) the witness is personally acquainted with, or is otherwise satisfied as to the identity of, the person to whose execution of the application, dealing or caveat the witness is attesting, and            | 12 |
|  | 13 |
|  | 14 |
|  | 15 |
| (ii) the execution by that person of the application, dealing or caveat took place in the presence of the witness.   | 16 |
|  | 17 |
|  | 18 |
| <b>[12] Parts 13 and 14</b>  | 19 |
| Omit Part 14. Insert instead:  | 20 |
| <b>Part 13 Civil rights and remedies</b>   | 21 |
| <b>Division 1 Proceedings for the possession or recovery of land</b>   | 22 |
|  | 23 |
| <b>118 Registered proprietor protected except in certain cases</b>   | 24 |
| (1) Proceedings for the possession or recovery of land do not lie against the registered proprietor of the land, except as follows:  | 25 |
|  | 26 |
| (a) proceedings brought by a mortgagee against a mortgagor in default,   | 27 |
|  | 28 |
| (b) proceedings brought by a chargee or covenant chargee against a charger or covenant charger in default,   | 29 |
|  | 30 |

- (c) proceedings brought by a lessor against a lessee in default, 1  
2
- (d) proceedings brought by a person deprived of land by fraud against: 3  
4
  - (i) a person who has been registered as proprietor of the land through fraud, or 5  
6
  - (ii) a person deriving (otherwise than as a transferee bona fide for valuable consideration) from or through a person registered as proprietor of the land through fraud, 7  
8  
9  
10
- (e) proceedings brought by a person deprived of, or claiming, land that (by reason of the misdescription of other land or its boundaries) has been included in a folio of the Register for the other land against a person who has been registered as proprietor of the other land (otherwise than as a transferee bona fide for valuable consideration), 11  
12  
13  
14  
15  
16  
17
- (f) proceedings brought by a registered proprietor under an earlier folio of the Register against a registered proprietor under a later folio of the Register where the two folios have been created for the same land. 18  
19  
20  
21
- (2) Despite any rule of law or equity to the contrary: 22
  - (a) the production of a manual folio is an absolute bar and estoppel to any such proceedings commenced before the production of the folio against the person named in the folio as a registered proprietor or lessee of the land, and 23  
24  
25  
26
  - (b) the production of a computer folio certificate for a computer folio is an absolute bar and estoppel to any such proceedings commenced before the time specified in the certificate against the person named in the certificate as a registered proprietor or lessee of the land. 27  
28  
29  
30  
31
- (3) Subsection (2) does not apply to proceedings of the kind referred to in subsection (1) (a)–(f). 32  
33
- (4) This section does not affect: 34
  - (a) any proceedings in relation to land for which a qualified folio of the Register has been created, being proceedings based on a subsisting interest within the meaning of Part 4A, or 35  
36  
37  
38

- 
- (b) any proceedings brought by a person deprived of, or claiming, land that (by reason of the misdescription of other land or its boundaries) has been included in a limited folio of the Register for the other land, whether or not the registered proprietor of the other land is a transferee of the land bona fide for valuable consideration. 1  
2  
3  
4  
5  
6  
7
- 119 Defendant's entitlements where improvements have been made 8**
- (1) This section applies to proceedings for the possession or recovery of land in the circumstances referred to in section 118 (1) (e) or (f). 9  
10  
11
- (2) If the defendant or any person through whom the defendant claims has made improvements to the land before the proceedings are commenced: 12  
13  
14
- (a) the fact that the improvements have been made may be pleaded by the defendant, and 15  
16
- (b) if the plaintiff's title to the land is established: 17
- (i) the value of the improvements, and 18
- (ii) the value of the land without the improvements, 19  
are to be separately assessed. 20
- (3) An order for the possession or recovery of the land is not to be made until an amount equivalent to the value of the improvements, less the plaintiff's costs in the proceedings, is paid into court for payment to the defendant. 21  
22  
23  
24
- (4) If that amount is not paid within 3 months after the assessment is made: 25  
26
- (a) the plaintiff ceases to be entitled to possession of the land and becomes entitled only to an amount equivalent to the sum of: 27  
28  
29
- (i) the value of the land without the improvements, 30  
and 31
- (ii) the plaintiff's costs in the proceedings, and 32
- (b) on paying that amount to the plaintiff, the defendant becomes entitled to retain possession of the land. 33  
34

|                   |  |    |
|-------------------|--|----|
| <b>Division 2</b> | <b>Proceedings for compensation</b>  | 1  |
| <b>120</b>        | <b>Proceedings for compensation</b>  | 2  |
| (1)               | Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from: | 3  |
|                   |  | 4  |
|                   |  | 5  |
| (a)               | fraud, or  | 6  |
| (b)               | any error, misdescription or omission in the Register, or  | 7  |
| (c)               | the land being brought under the provisions of this Act, or  | 8  |
|                   |  | 9  |
| (d)               | the registration (otherwise than under section 45E) of some other person as proprietor of the land, estate or interest,                      | 10 |
|                   |  | 11 |
|                   |  | 12 |
|                   | may take proceedings in any court of competent jurisdiction for the recovery of damages.   | 13 |
|                   |  | 14 |
| (2)               | Such proceedings may be taken:   | 15 |
| (a)               | against the person whose acts or omissions have given rise to the loss or damage referred to in subsection (1), or                           | 16 |
|                   |  | 17 |
|                   |  | 18 |
| (b)               | against the Registrar-General.   | 19 |
| (3)               | Proceedings against the Registrar-General are to be taken in accordance with Part 14.  | 20 |
|                   |  | 21 |
| <b>Division 3</b> | <b>Review of Registrar-General's actions</b>   | 22 |
| <b>121</b>        | <b>Registrar-General to supply reasons for certain decisions</b>   | 23 |
| (1)               | A person who is dissatisfied with the Registrar-General's decision:  | 24 |
|                   |  | 25 |
| (a)               | to have land brought under the provisions of this Act, or to have any dealing registered or recorded, or                                     | 26 |
|                   |  | 27 |
| (b)               | to have any certificate of title, order for foreclosure or other instrument issued in relation to land, or                                   | 28 |
|                   |  | 29 |

---

|            |  |                            |
|------------|--|----------------------------|
| (c)        | to have exercised or performed in relation to land any function or duty which, by this Act, is required to be exercised or performed by the Registrar-General,   | 1<br>2<br>3                |
|            | may apply to the Registrar-General for a copy of the Registrar-General's reasons for the decision.   | 4<br>5                     |
| (2)        | It is the Registrar-General's duty to provide the person with those reasons.   | 6<br>7                     |
| <b>122</b> | <b>Review of decisions by Supreme Court</b>  | 8                          |
| (1)        | A person who is dissatisfied with a decision referred to in section 121 (1) may apply to the Supreme Court for a review of the decision.   | 9<br>10<br>11              |
| (2)        | For the purpose of conducting such a review, the Supreme Court may reconsider and determine any question of fact involved in the decision.   | 12<br>13<br>14             |
| (3)        | If the Registrar-General has provided reasons for the decision, the Registrar-General may not rely on any grounds that are not set out in those reasons except by leave of the Supreme Court.  | 15<br>16<br>17             |
| (4)        | After reviewing the Registrar-General's decision on an application under this section, the Supreme Court:  | 18<br>19                   |
|            | (a) may uphold the decision, or  | 20                         |
|            | (b) may order that the Registrar-General take such action in relation to the matters raised by the application as the Supreme Court considers appropriate, being action that the Registrar-General could, but for the order, have taken, | 21<br>22<br>23<br>24<br>25 |
|            | and may make such further or other orders as the Supreme Court considers appropriate.  | 26<br>27                   |
| (5)        | This section does not apply to the determination of the position of a boundary under Part 14A.   | 28<br>29                   |
| <b>123</b> | <b>Applicant may state case for Supreme Court</b>  | 30                         |
| (1)        | If the Registrar-General makes any objection to the title of land the subject of:  | 31<br>32                   |
|            | (a) an application to bring the land under the provisions of this Act, or  | 33<br>34                   |



|            |   |    |
|------------|---|----|
| (b)        | a possessory application,   | 1  |
|            | being an objection that the applicant considers not well          | 2  |
|            | founded, the applicant may state a case for the opinion of the    | 3  |
|            | Supreme Court.  | 4  |
| (2)        | The Registrar-General is entitled to appear and be heard, either  | 5  |
|            | personally or by a legal practitioner or agent, at the hearing of | 6  |
|            | the matter.   | 7  |
| (3)        | The Supreme Court's opinion on the stated case binds the          | 8  |
|            | Registrar-General in relation to the application, but does not    | 9  |
|            | affect:   | 10 |
| (a)        | the right conferred on any person by Part 14 to make a            | 11 |
|            | claim against the Torrens Assurance Fund, or                      | 12 |
| (b)        | the right conferred on the applicant by section 122 to            | 13 |
|            | apply for a review of the Registrar-General's decision            | 14 |
|            | on the application.   | 15 |
| <b>124</b> | <b>Registrar-General may state case for Supreme Court</b>         | 16 |
| (1)        | If any question arises in respect of:                             | 17 |
| (a)        | land under the provisions of this Act, or                         | 18 |
| (b)        | land the subject of action under Part 4, 4A, 4B or 6A             | 19 |
|            | with regard to the performance or exercise of any duties          | 20 |
|            | or functions conferred or imposed on the                          | 21 |
|            | Registrar-General by or under this or any other Act,              | 22 |
|            | the Registrar-General may state a case for the opinion of the     | 23 |
|            | Supreme Court.  | 24 |
| (2)        | If the question arises in connection with:                        | 25 |
| (a)        | an application to bring the land under the provisions of          | 26 |
|            | this Act, or  | 27 |
| (b)        | a possessory application,   | 28 |
|            | the applicant is entitled to appear and be heard, either          | 29 |
|            | personally or by a legal practitioner or agent, at the hearing of | 30 |
|            | the matter.   | 31 |
| (3)        | The Supreme Court's opinion on the stated case binds the          | 32 |
|            | Registrar-General in relation to the question.                    | 33 |

|                   |  |                            |
|-------------------|--|----------------------------|
| <b>125</b>        | <b>Orders as to costs</b>  | 1                          |
|                   | (1) In any proceedings under this Division, the Supreme Court may make such orders as to costs as it considers just.   | 2<br>3                     |
|                   | (2) An order requiring the Registrar-General to pay costs in any proceedings relating to an application to bring land under the provisions of this Act is not to be made unless the Supreme Court is of the opinion that the Registrar-General has acted unreasonably. | 4<br>5<br>6<br>7<br>8      |
|                   | (3) All costs to be paid by the Registrar-General under such an order are to be paid out of the Torrens Assurance Fund.  | 9<br>10                    |
| <b>Division 4</b> | <b>General</b>   | 11                         |
| <b>126</b>        | <b>Registrar-General may intervene in certain proceedings</b>  | 12                         |
|                   | (1) The Registrar-General may intervene in any proceedings before any court (other than criminal proceedings) if of the opinion that the court's decision in the proceedings could result in compensation becoming payable from the Torrens Assurance Fund.            | 13<br>14<br>15<br>16<br>17 |
|                   | (2) The Registrar-General has a right to appear and be heard, either personally or by a legal practitioner or agent, when intervening in any such proceedings.   | 18<br>19<br>20             |
|                   | (3) On intervening in any such proceedings, the Registrar-General becomes a party to the proceedings and has all the rights of such a party.   | 21<br>22<br>23             |
| <b>127</b>        | <b>Barring of actions where claimant on notice</b>   | 24                         |
|                   | (1) Proceedings based on a claim of deprivation of land through the bringing of that land under the provisions of this Act do not lie against the Registrar-General where the person alleging the deprivation, or the person through whom he or she claims title:      | 25<br>26<br>27<br>28       |
|                   | (a) had notice (by personal service or otherwise) or was otherwise aware that application had been made to bring the land under the provisions of this Act, and  | 29<br>30<br>31             |
|                   | (b) had omitted to lodge a caveat forbidding the bringing of the land under the provisions of this Act or had allowed such a caveat to lapse.  | 32<br>33<br>34             |

- (2) Proceedings based on a claim of deprivation of land through the grant of a possessory application do not lie against the Registrar-General where the person alleging the deprivation, or the person through whom he or she claims title:
- (a) had notice (by personal service or otherwise) or was otherwise aware that the application had been made, and
  - (b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.
- (3) Proceedings based on the extinguishment of a restrictive covenant do not lie against the Registrar-General where the person alleging loss from that extinguishment:
- (a) had notice (by personal service or otherwise) or was otherwise aware that an application for extinguishment of the restrictive covenant had been made, and
  - (b) had omitted to lodge a caveat forbidding the grant of the application or had allowed such a caveat to lapse.

## **Part 14 The Torrens Assurance Fund**

### **Division 1 Preliminary**

#### **128 Definitions**

- (1) In this Part:

*administrative proceedings* means proceedings on a claim referred to in section 131.

*compensable loss* means loss or damage of the kind referred to in section 129 (1), other than loss or damage of the kind referred to in section 129 (2).

*compensation* means compensation from the Torrens Assurance Fund to which a person is entitled under section 129.

*court proceedings* means proceedings referred to in section 132.

*official search* has the same meaning as it has in Part 11A.

*professional indemnity insurer* means an insurer, scheme or fund (whether or not established by or under any Act or law) by or from which claims are payable, being claims made by persons sustaining loss or damage owing to any fraudulent, wilful or negligent act or omission by a person carrying on business in a particular profession, trade or calling. 1  
2  
3  
4  
5  
6

(2) In this Part, *approved determination of native title*, *native title* and *native title rights and interests* have the same meanings as they have in the *Native Title Act 1993* of the Commonwealth. 7  
8  
9

**Division 2 Compensation generally** 10

**129 Circumstances in which compensation payable** 11

- (1) Any person who suffers loss or damage as a result of the operation of this Act in respect of any land, where the loss or damage arises from: 12  
13  
14
- (a) any act or omission of the Registrar-General in the execution or performance of his or her functions or duties under this Act in relation to the land, or 15  
16  
17
  - (b) the registration (otherwise than under section 45E) of some other person as proprietor of the land, or of any estate or interest in the land, or 18  
19  
20
  - (c) any error, misdescription or omission in the Register in relation to the land, or 21  
22
  - (d) the land having been brought under the provisions of this Act, or 23  
24
  - (e) the person having been deprived of the land, or of any estate or interest in the land, as a consequence of fraud, or 25  
26  
27
  - (f) an error or omission in an official search in relation to the land, 28  
29
- is entitled to payment of compensation from the Torrens Assurance Fund. 30  
31

- (2) Compensation is not payable in relation to any loss or damage suffered by any person:
- (a) to the extent to which the loss or damage is a consequence of any act or omission by that person, or
  - (b) to the extent to which the loss or damage:
    - (i) is a consequence of any fraudulent, wilful or negligent act or omission by any solicitor, licensed conveyancer or real estate agent, and
    - (ii) is compensable under an indemnity given by a professional indemnity insurer, or
  - (c) to the extent to which that person has failed to mitigate the loss or damage, or
  - (d) to the extent to which the loss or damage has been offset by some other benefit to that person that has arisen from substantially the same circumstances as those from which the loss or damage has arisen, or
  - (e) to the extent to which the loss or damage arises because of an error or miscalculation in the measurement of land, or
  - (f) to the extent to which the loss or damage arises from:
    - (i) the breach by a registered proprietor of any trust (whether express, implied or constructive), or
    - (ii) the inclusion of the same land in two or more grants, or
  - (g) to the extent to which the loss or damage arises from the recording, or the omitting to record, in the Register of an approved determination of native title or other matter relating to native title rights and interests, or
  - (h) to the extent to which the loss or damage arises from circumstances in respect of which this Act provides that proceedings against the Registrar-General do not lie.
- (3) Subsection (2)(g) applies whether the loss or damage is alleged to have been suffered:
- (a) by a holder of native title or a claimant for native title, or
  - (b) by a person deprived of land or an estate or interest in land as a result of the making of an approved determination of native title, or

|                   |  |                        |
|-------------------|--|------------------------|
| (c)               | by any other person,   | 1                      |
|                   | but does not apply to an error made by the Registrar-General in the recording of matter in the Register.   | 2<br>3                 |
| <b>130</b>        | <b>Minister may direct ex gratia payments from Torrens Assurance Fund</b>  | 4<br>5                 |
| (1)               | Despite section 129 (2), the Minister may, on the recommendation of the Registrar-General, direct that compensation is payable in any of the circumstances referred to in that subsection if, in all of the circumstances of the case, the Minister is satisfied that it would be just to do so. | 6<br>7<br>8<br>9<br>10 |
| (2)               | A decision as to whether or not to give a direction under this section is in the absolute discretion of the Minister.  | 11<br>12               |
| (3)               | Without limiting subsection (2), nothing in any recommendation of the Registrar-General requires the Minister to give a direction under this section.  | 13<br>14<br>15         |
| (4)               | A decision by the Minister under this section may not be called into question in any legal proceedings.  | 16<br>17               |
| <b>Division 3</b> | <b>Administrative proceedings</b>  | 18                     |
| <b>131</b>        | <b>Administrative proceedings for the recovery of compensation</b>   | 19                     |
| (1)               | A person who has suffered compensable loss may lodge a claim for compensation, in the approved form, with the Registrar-General.   | 20<br>21<br>22         |
| (2)               | Such a claim may not be made more than 6 years after:  | 23                     |
| (a)               | the date on which the act or omission giving rise to the compensable loss occurred, or   | 24<br>25               |
| (b)               | if the compensable loss arose after the date on which that act or omission occurred, the date on which the compensable loss arose.   | 26<br>27<br>28         |
| (3)               | The regulations may make provision for or with respect to the manner in which a claim is to be made and dealt with.  | 29<br>30               |

- (4) The Registrar-General may determine a claim by making an offer to settle (which may include an offer to pay compensation or an offer to take other specified action, or both) or by refusing the claim. 1  
2  
3  
4
- (5) The maximum compensation that may be offered is \$100,000 (or such other amount as may be prescribed by the regulations) unless the Minister determines a greater amount in respect of a particular claim. 5  
6  
7  
8
- (6) A claimant must co-operate fully with the Registrar-General for the purpose of ensuring that the Registrar-General has sufficient information to be able: 9  
10  
11
  - (a) to assess the validity of the claim, and 12
  - (b) to assess the claimant's compensable loss, and 13
  - (c) to make an informed offer of compensation. 14
- (7) In particular, a claimant must comply with any reasonable request by the Registrar-General: 15  
16
  - (a) to furnish specified information or to produce specified documents, or 17  
18
  - (b) to take specified action to further the claim. 19
- (8) In assessing the reasonableness of a request by the Registrar-General, regard is to be had to the following criteria: 20  
21
  - (a) the amount of time the claimant needs to comply with the request, 22  
23
  - (b) the degree to which the information, document or action requested is relevant to the determination of the claim, 24  
25
  - (c) the degree to which the information already available to the Registrar-General should suffice to enable the claim to be properly determined, 26  
27  
28
  - (d) the degree to which compliance with the request would impose undue hardship on the claimant, 29  
30
  - (e) the degree to which any information sought by the request is the subject of legal professional privilege, 31  
32
  - (f) whether any information, document or action the subject of the request is sufficiently specified, 33  
34
  - (g) the timing of the request, having regard to its effect on the claimant's ability to commence court proceedings, 35  
36

|                   |  |                                  |
|-------------------|--|----------------------------------|
| (h)               | such other criteria as are relevant to the question of whether the request is reasonable.  | 1<br>2                           |
| (9)               | For the purposes of section 132, a claim is taken to have been refused if it is not determined:  | 3<br>4                           |
| (a)               | within 12 months after the claim was made, or  | 5                                |
| (b)               | if at the end of that period the claimant has failed to provide information in fulfilment of the duty imposed by subsection (6), within 2 months after that information is provided.   | 6<br>7<br>8<br>9                 |
| (10)              | Subsection (9) does not prevent a claim from being determined after the expiry of the relevant period referred to in that subsection.  | 10<br>11<br>12                   |
| (11)              | Interest at the rate payable on an unpaid judgment of the Supreme Court under the <i>Supreme Court Act 1970</i> is payable on an offer of compensation that has been accepted by the claimant in administrative proceedings to the extent to which the amount accepted remains unpaid at the end of 28 days after the date on which it was accepted. | 13<br>14<br>15<br>16<br>17<br>18 |
| <b>Division 4</b> | <b>Court proceedings</b>   | 19                               |
| <b>132</b>        | <b>Court proceedings for the recovery of compensation</b>  | 20                               |
| (1)               | Proceedings before a court for the payment of compensation are to be taken against the Registrar-General as nominal defendant.   | 21<br>22<br>23                   |
| (2)               | Court proceedings may not be commenced:  | 24                               |
| (a)               | unless administrative proceedings have been commenced and determined in relation to the compensable loss, or   | 25<br>26<br>27                   |
| (b)               | more than 12 months after the date on which administrative proceedings have been determined in relation to the compensable loss,   | 28<br>29<br>30                   |
|                   | except by leave of the court or with the consent of the Registrar-General.   | 31<br>32                         |



- (3) Court proceedings may be commenced at any time during the period of 12 months referred to in subsection (2) (b) despite any provision of the *Limitation Act 1969* to the contrary. 1  
2  
3
- (4) In any court proceedings, the Registrar-General is not bound by any prejudicial act or omission by any party to the proceedings, such as: 4  
5  
6
- (a) entering into, or offering to enter into, a compromise, or 7  
    (b) granting, or offering to grant, a release or waiver. 8
- (5) If court proceedings are commenced following administrative proceedings that have been determined by the offer of compensation and the compensation awarded by the court is less than the compensation offered by the determination: 9  
10  
11  
12
- (a) the claimant's costs in the court proceedings are not payable by the Registrar-General, and 13  
14  
    (b) the Registrar-General's costs are payable by the claimant, 15  
16  
unless the court orders otherwise. 17
- Division 5      Miscellaneous** 18
- 133    Subrogation of rights to claim compensation** 19
- (1) A professional indemnity insurer cannot be subrogated to any other person in respect of that other person's right to claim compensation from the Torrens Assurance Fund in relation to compensable loss. 20  
21  
22  
23
- (2) If administrative proceedings or court proceedings are commenced in relation to a claimant's compensable loss, the Registrar-General is subrogated to the claimant in respect of the claimant's rights and remedies in relation to that loss: 24  
25  
26  
27
- (a) against any person against whom the claimant has a cause of action in respect of that loss, and 28  
29  
    (b) against any relevant professional indemnity insurer. 30
- (3) In the case of a deceased person, the compensation may be recovered from the deceased person's estate by proceedings taken against the deceased person's personal representative. 31  
32  
33

- |            |  |                      |
|------------|--|----------------------|
| (4)        | The Registrar-General may join any person as co-defendant in any court proceedings if of the opinion that the claimant has a cause of action against that person in respect of the compensable loss to which the proceedings relate. | 1<br>2<br>3<br>4     |
| (5)        | This section has effect despite any provision of the <i>Legal Profession Act 1987</i> or any other Act, law or agreement.  | 5<br>6               |
| <b>134</b> | <b>Torrens Assurance Fund</b>  | 7                    |
| (1)        | There is established in the Special Deposits Account an account called the Torrens Assurance Fund.   | 8<br>9               |
| (2)        | The following amounts are to be paid into the Torrens Assurance Fund:  | 10<br>11             |
| (a)        | any amounts that the Minister directs to be paid from fees paid to the Registrar-General for lodgment of any dealing, caveat or withdrawal of caveat,  | 12<br>13<br>14       |
| (b)        | any amounts recovered by the Registrar-General under or in connection with this Part,  | 15<br>16             |
| (c)        | any amounts advanced by the Treasurer for payment into the Fund,   | 17<br>18             |
| (d)        | any amounts appropriated by Parliament for payment into the Fund,  | 19<br>20             |
| (e)        | any amounts required by or under this or any other Act or law to be paid into the Fund.  | 21<br>22             |
| (3)        | The following amounts are payable out of the Torrens Assurance Fund:   | 23<br>24             |
| (a)        | any compensation payable under or in connection with this Part,  | 25<br>26             |
| (b)        | any amounts required to repay any advance made by the Treasurer for payment into the Fund,   | 27<br>28             |
| (c)        | any costs and expenses incurred by the Registrar-General in connection with any claim for compensation from the Fund, including the payment of compensation in settlement of any such claim,   | 29<br>30<br>31<br>32 |
| (d)        | any costs and expenses incurred by the Registrar-General in, or as incidental to, the administration of the Fund,  | 33<br>34<br>35       |

|            |  |                      |
|------------|--|----------------------|
| (e)        | any other amounts required by or under this or any other Act or law to be paid out of the Fund.  | 1<br>2               |
| (4)        | The fee payable to the Registrar-General for lodgment of any dealing, caveat or withdrawal of caveat may be prescribed so as to include the amount to be paid into the Torrens Assurance Fund. | 3<br>4<br>5<br>6     |
| (5)        | Any shortfall in the Torrens Assurance Fund is to be met from the Consolidated Fund, which is appropriated accordingly.  | 7<br>8               |
| (6)        | The Torrens Assurance Fund is to repay the Consolidated Fund.  | 9<br>10              |
| <b>135</b> | <b>Registrar-General may settle claims</b>   | 11                   |
| (1)        | The Registrar-General may settle any claim for payment of compensation from the Torrens Assurance Fund.  | 12<br>13             |
| (2)        | For the purpose of settling such a claim, the Registrar-General may participate in proceedings in the nature of mediation or neutral evaluation.   | 14<br>15<br>16       |
| (3)        | The power of the Registrar-General to settle such a claim is subject to the following restrictions:  | 17<br>18             |
| (a)        | the claim must not be settled unless the Registrar-General is satisfied:   | 19<br>20             |
| (i)        | that the claimant would be successful in proceedings to enforce the claim, or  | 21<br>22             |
| (ii)       | that it is otherwise reasonable in all the circumstances of the case to settle the claim,  | 23<br>24             |
| (b)        | the amount to be paid in settlement of the claim must not exceed \$100,000 (or such other amount as may be prescribed by the regulations) unless the Minister has approved of the settlement.  | 25<br>26<br>27<br>28 |
| (4)        | In settling such a claim, the Registrar-General may pay such amount (which may include amounts by way of costs and interest) as the Registrar-General thinks reasonable.                       | 29<br>30<br>31       |
| (5)        | The amount may include any costs incurred by the claimant before the settlement.   | 32<br>33             |

---

|  |                                |
|--|--------------------------------|
| (6) An officer or other person employed in the Land Titles Office does not have the power to settle claims on behalf of the Registrar-General, but the Registrar-General may delegate to such a person the power to settle such claims.  | 1<br>2<br>3<br>4               |
| <b>[13] Section 146</b>  | 5                              |
| Insert after section 145:  | 6                              |
| <b>146 Exclusion of personal liability</b>   | 7                              |
| An act or omission by the Registrar-General, or by any person acting under the direction, or with the authority, of the Registrar-General, does not subject the Registrar-General or any person so acting personally to any action, liability, claim or demand if the act or omission was done or omitted to be done in good faith in the administration or execution of this Act. | 8<br>9<br>10<br>11<br>12<br>13 |
| <b>[14] Schedule 3 Savings and transitional provisions</b>   | 14                             |
| Insert at the end of clause 1 (1):   | 15                             |
| <i>Real Property Amendment (Compensation) Act 2000</i>   | 16                             |
| <b>[15] Schedule 3, Part 5</b>   | 17                             |
| Insert after Part 4 of Schedule 3:   | 18                             |
| <b>Part 5 Real Property Amendment (Compensation) Act 2000</b>  | 19                             |
| <b>10 Definitions</b>  | 20                             |
| In this Part, <i>amending Act</i> means the <i>Real Property Amendment (Compensation) Act 2000</i> .   | 21<br>22                       |
| <b>11 Current proceedings</b>  | 23                             |
| Part 14 of this Act, as in force immediately before the commencement of Schedule 1 [12] to the amending Act, continues to apply to and in respect of proceedings commenced before that commencement as if the amending Act had not been enacted.   | 24<br>25<br>26<br>27<br>28     |

|           |  |                            |
|-----------|--|----------------------------|
| <b>12</b> | <b>Current administrative claims</b>   | 1                          |
|           | Section 129 of this Act, as in force immediately before the commencement of Schedule 1 [12] to the amending Act, continues to apply to and in respect of a claim referred to in subsection (1) of that section, being a claim made before that commencement, as if the amending Act had not been enacted.          | 2<br>3<br>4<br>5<br>6      |
| <b>13</b> | <b>Future proceedings commenced in relation to existing matters</b>  | 7                          |
|           | Parts 13 and 14 of this Act, as substituted by Schedule 1 [12] to the amending Act, apply to and in respect of any matter in respect of which proceedings are commenced on or after the commencement of those Parts, including any matter that occurred before that commencement.                                  | 8<br>9<br>10<br>11<br>12   |
| <b>14</b> | <b>Torrens Assurance Fund</b>  | 13                         |
|           | The Torrens Assurance Fund referred to in section 134 of this Act (as inserted by Schedule 1 [12] to the amending Act) is a continuation of the Torrens Assurance Fund referred to in section 133A of this Act (as in force immediately before the repeal of that section by Schedule 1 [12] to the amending Act). | 14<br>15<br>16<br>17<br>18 |
| <b>15</b> | <b>Exclusion of personal liability</b>   | 19                         |
|           | Section 146 (as inserted by Schedule 1 [13] to the amending Act) extends to acts and omissions that occurred before the commencement of that section.  | 20<br>21<br>22             |