

Passed by both Houses



New South Wales

# Real Property and Conveyancing Legislation Amendment Bill 1999

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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, , 1999*



New South Wales

## **Real Property and Conveyancing Legislation Amendment Bill 1999**

Act No , 1999

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An Act to amend the *Real Property Act 1900* with respect to corrections to the Register, cautions, easements, caveats, severance of joint tenancies and appeals from boundary determinations, and for other purposes; to amend the *Conveyancing Act 1919* with respect to easements and positive covenants, and for other purposes; and to consequentially amend the *Land and Environment Court Act 1979*.

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*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.*

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Real Property and Conveyancing Legislation Amendment Act 1999*.

**2 Commencement**

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

**3 Amendment of Real Property Act 1900 No 25**

The *Real Property Act 1900* is amended as set out in Schedule 1.

**4 Amendment of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

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## Schedule 1 Amendment of Real Property Act 1900

(Section 3)

### [1] Section 12 Powers of Registrar-General

Insert after section 12 (1) (d):

- (d1) The Registrar-General may, subject to subsection (3A), on such evidence and after such notices (if any) as appear to the Registrar-General to be sufficient, and with the consent of the proprietors and any mortgagees of the land, correct the Register by correcting a reference to one or more lot numbers in a plan. The Registrar-General may make the correction on the application of a proprietor or mortgagee or on the Registrar-General's own initiative.

### [2] Section 12 (3A)

Insert after section 12 (3):

- (3A) If the Registrar-General makes a correction referred to in subsection (1) (d1):
  - (a) the correction:
    - (i) must not make original words or symbols illegible, and
    - (ii) must be dated, and
    - (iii) must be initialled by the Registrar-General, and
  - (b) the correction takes effect as if the error corrected had not occurred, and
  - (c) the correction does not affect the construction of any instrument made or entered into before the correction so as to prejudice any person claiming under that instrument.

### [3] Section 23A Instruments of title, how to be dealt with

Omit "section 14 of the *Archives Act 1960*" from section 23A (4) (c).

Insert instead "section 21 of the *State Records Act 1998*".

**[4] Section 28MA Lapsing of caution on qualified folio created after registered deed other than for value (section 28JA (1A))**

Omit section 28MA (2). Insert instead:

- (2) Firstly, if after the creation of the qualified folio, a person for valuable consideration and without fraud to which the person is a party becomes registered or, pursuant to section 36 (8), is taken to have become registered, as proprietor of an estate or interest in the land comprised in the folio, and another person subsequently for valuable consideration and without fraud to which that other person is a party becomes, or is taken to have become, registered as proprietor of that estate or interest, the caution recorded on the folio lapses as regards the estate or interest:
- (a) on the expiration of 6 years after the time when the firstmentioned person becomes, or is taken to have become, registered, or
  - (b) at the time the other person becomes, or is taken to have become, registered,
- whichever is the later.

**[5] Section 38 Recording dealings on certificate of title etc**

Omit “*Archives Act 1960*” wherever occurring in section 38 (5) (b) and (6). Insert instead “*State Records Act 1998*”.

**[6] Section 48 Creation of cross-easements for party walls by plans on application**

Insert after section 48 (1):

- (1A) A plan registered or recorded under Division 3 of Part 23 of the *Conveyancing Act 1919* on or after 1 August 1996 creates cross-easements if:
- (a) a boundary of a lot is shown in the plan as passing longitudinally through the whole or any part of a wall, and
  - (b) the wall is described in the plan as a “proposed party wall”, and

- (c) the Registrar-General has recorded in the Register an application to create cross-easements for support of the wall made in the approved form by each person having a registered estate or interest in the land that will be benefited or burdened by the cross-easements.

**[7] Section 48 (2)**

Omit “such an easement”.

Insert instead “an easement referred to in subsection (1) or (1A)”.

**[8] Section 49 Cancellation of recordings of easements after abandonment, consolidation of tenements or release**

Insert after section 49 (1):

- (1A) The Registrar-General may, under this section, cancel a recording relating to an easement in relation to:
  - (a) all of the land benefited or burdened by the easement, or
  - (b) any one or more of the lots, or part of a lot, burdened by the easement, or
  - (c) any one or one or more of the lots benefited by the easement.

**[9] Section 49 (2)**

Insert “before the application for the cancellation of the recording is made to the Registrar-General” after “years”.

**[10] Section 54 Lease may be surrendered by execution of surrender in approved form**

Omit “or insolvent” from section 54 (1).

**[11] Section 74LA**

Insert after section 74L:

**74LA Caveat lapses when order ceases to have effect**

- (1) If the operation of a caveat is extended for a specified period by an order of the Supreme Court under this Part and no further order is made by the Court extending the operation of the caveat before the expiration of the period specified in the order, the caveat lapses on the expiration of that period.
- (2) If the operation of a caveat is extended until the further order of the Court by an order of the Supreme Court under this Part, the caveat lapses if the Registrar-General, on being satisfied that the proceedings in which the order was obtained have been finalised and that no further order is likely to be sought, makes a recording in the Register to the effect that the caveat has lapsed.

**[12] Section 97 Severance of joint tenancy by unilateral action**

Omit “A transfer” from section 97 (1).  
Insert instead “Registration of a transfer”.

**[13] Section 97 (2)**

Insert “proposed to be” before “severed”.

**[14] Section 97 (2)**

Omit “severs” where firstly occurring.  
Insert instead “proposes to sever”.

**[15] Section 97 (3)**

Omit “severs”. Insert instead “proposes to sever”.

**[16] Section 97 (5)**

Omit “lodges the dealing”.  
Insert instead “executed the dealing, or on whose behalf the dealing was executed”.

**[17] Section 97 (6)**

Insert after section 97 (5):

- (6) Despite subsection (5), the Registrar-General is not required to give notice of the lodgment of a dealing for registration or recording that may sever a joint tenancy to a joint tenant in any of the following circumstances:
  - (a) if the proposed severance is to arise from the recording of a court order made in proceedings to which the joint tenant is a party,
  - (b) if the proposed severance is to arise from the registration of a transfer pursuant to a writ in respect of an interest of any of the joint tenants,
  - (c) if the dealing concerned is witnessed by the joint tenant and the dealing indicates that the joint tenancy is to be severed,
  - (d) if the dealing is accompanied by a written acknowledgment by the joint tenant that he or she has received legal advice as to the effects of the severance of the joint tenancy,
  - (e) if the proposed severance is to arise out of registration following an application under section 90.

**[18] Section 126 Compensation for party deprived of land**

Omit “dead, bankrupt, or insolvent,” from section 126 (5) (b).  
Insert instead “dead or bankrupt”.

**[19] Section 131 Money paid in respect of a claim on Torrens Assurance Fund may be recovered against estate of deceased or bankrupt person**

Omit “insolvent or” wherever occurring in section 131 (2).

**[20] Section 133 Torrens Assurance Fund not liable in certain cases**

Omit “insolvent or” from section 133 (1) (c).



**[21] Section 135C**

Omit the section. Insert instead:

**135C Boundaries to which Part applies**

This Part authorises the determination of the position of a boundary between adjoining parcels of land, whether or not each parcel is under the provisions of this Act.

**[22] Section 135J**

Omit the section. Insert instead:

**135J Appeals to Land and Environment Court**

- (1) A person who is dissatisfied with a determination under this Part may appeal to the Land and Environment Court for determination by the Court of the position of the boundary.
- (2) Only the following persons can appeal:
  - (a) an owner of land adjoining the boundary,
  - (b) a person who applied for the determination as purchaser under a contract for the sale of land adjoining the boundary,
  - (c) a public or local authority or the Head of a Government Department.
- (3) An appeal must be made not later than 28 days after notice of the Registrar-General's determination is given to the person concerned.
- (4) The Registrar-General is not to take action under section 135K (Noting of boundary on plans etc):
  - (a) until the expiration of the period during which an appeal can be made against the determination concerned to the Land and Environment Court, and
  - (b) (if an appeal is made during that period) until the matter has been determined by the Land and Environment Court.

- (5) The Registrar-General is entitled to be joined as a party, and to appear and be heard either personally or by his or her duly appointed agent, at the hearing of an appeal under this section and at the hearing of any appeal under the *Land and Environment Court Act 1979* in respect of any such appeal.

**[23] Section 135K Noting of boundary on plans etc**

Insert after section 135K (3):

- (4) The Registrar-General may, if the position of a boundary is determined under this Part, request the applicant for the boundary determination to deposit in the office of the Registrar-General a plan (being, if the Registrar-General so specifies, a plan of survey) showing details of the boundary as so determined, together with the number of copies of the plan specified by the Registrar-General.
- (5) The Registrar-General may refuse to take action under this section if an applicant fails to comply with a request under subsection (4).

**[24] Section 135O Owners may agree to dispense with certain requirements**

Omit “referral” from section 135O (b). Insert instead “appeal”.

**[25] Section 138**

Omit the section. Insert instead:

**138 Court may direct cancellation of folios and other actions related to folios**

- (1) A court may, in proceedings for the recovery of any land, estate or interest from the person registered as proprietor of the land, make ancillary orders of the kind set out in subsection (3), if the court is of the opinion that the circumstances of the case require any such order to be made.

- (2) A court may, in proceedings for the possession or production of a certificate of title or in proceedings in which the court makes a determination as to an estate or interest in land, make ancillary orders of the kind set out in subsection (3), if the court is of the opinion that the certificate of title has not been, or is not likely to be, produced by a person for the purposes of the registration of a dealing affecting the land concerned.
- (3) A court may order the Registrar-General to do one or more of the following:
  - (a) cancel or amend a folio of the Register,
  - (b) cancel, amend or make a recording in a folio of the Register,
  - (c) create a new folio of the Register,
  - (d) issue a new certificate of title.
- (4) The Registrar-General must give effect to any such order.
- (5) A court that makes an order under this section may order that a person deliver a certificate of title or other instrument to the Registrar-General for the purpose of giving effect to any such order.
- (6) An action does not lie against the Registrar-General for recovery of damages sustained through deprivation of land, or any estate or interest in land, because of compliance by the Registrar-General with an order under this section.
- (7) In this section:  
*court* does not include a Local Court or a tribunal.

**[26] Schedule 3 Savings and transitional provisions**

Insert at the end of clause 1 (1):

*Real Property and Conveyancing Legislation Amendment Act  
1999*

**[27] Schedule 3, Part 4**

Insert at the end of Part 3:

**Part 4 Real Property and Conveyancing Legislation  
Amendment Act 1999**

**6 Definition**

In this Part:

*amending Act* means the *Real Property and Conveyancing Legislation Amendment Act 1999*.

**7 Lapsing of existing caveats**

Section 74LA, as inserted by the amending Act, applies to orders made by the Supreme Court before the commencement of that section and in force immediately before that commencement in the same way as it applies to orders made after that commencement.

**8 Severance of joint tenancies**

Section 97, as amended by the amending Act, does not apply to or in respect of a dealing lodged, but not registered or recorded, immediately before the commencement of this clause.

**9 Objections to boundary determinations**

- (1) Section 135J, as in force immediately before the commencement of this clause, continues to apply in respect of a request made under that section before that commencement.
- (2) The Land and Environment Court has jurisdiction to deal with a referral arising out of a request referred to in subclause (1) as if the *Land and Environment Court Act 1979* was not amended by the amending Act.

## **Schedule 2 Amendment of other Acts**

(Section 4)

### **2.1 Conveyancing Act 1919 No 6**

#### **[1] Section 88BA Positive covenants for maintenance or repair**

Insert “If the land is subject to an easement without a dominant tenement created in favour of a prescribed authority (as referred to in section 88A), the instrument must indicate the name of the prescribed authority.” after “covenant.” in section 88BA (3).

#### **[2] Section 88BA (6) (a)**

Omit “transfer and”.

#### **[3] Section 88B Creation and release of easements, profits à prendre and restrictions on use of land by plans**

Insert “or partially released” after “released” in section 88B (2) (c1).

#### **[4] Section 88B (3) (c)**

Insert “88BA,” before “88D”.

#### **[5] Section 88K Power of Court to create easements**

Omit “in accordance with the easement” from section 88K (2) (a).  
Insert instead “having the benefit of the easement”.

#### **[6] Schedule 4A Easements in gross**

Omit “the lot benefited” from clause 2 (a) of Part 5.  
Insert instead “any structure used by that body”.

**[7] Schedule 9 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Real Property and Conveyancing Legislation Amendment Act  
1999*

**2.2 Land and Environment Court Act 1979 No 204**

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

Omit section 19 (c). Insert instead:

- (c) appeals against boundary determinations under Part 14A (Boundary determinations) of the *Real Property Act 1900*,